

CODE 603/604 REVIEW COMMITTEE

Issues for Consideration in Code Sections 603, 604 & 609

A committee of University faculty, administrators, and attorneys has been appointed to review, and consider recommending possible changes to, UNC Code Sections 603 and 604. A list of the committee's members is attached. The following list of issues and possible considerations is meant to be illustrative and not limiting.

1) Section 603 - Discharge and Sanctions

A. Presently, a campus faculty hearing committee, following a hearing, makes its recommendation for a decision to the Chancellor. The Chancellor evaluates the record on appeal and the recommended decision, then makes a decision. The Chancellor's decision may be appealed by the faculty member to the campus Board of Trustees. After the Board of Trustees decides the case, the faculty member may then appeal to the Board of Governors. The duration of this process can be lengthy, and for a faculty member who is paying a private attorney the cost can be quite expensive.

Does it make sense to continue with the present appeal process, or would it be better for the appeal process to be shortened? Effective January 1, 2004, the Boards of Trustees were removed from the Section 604 appeals on non-reappointments. Does it add value to the process for the Board of Trustees to continue being involved with these discharge appeals? Or, is it better somehow to shorten the process? Another possibility would be for the appeal to go to the Trustees, with a discretionary review option by the Board of Governors.

B. Presently, Section 603 focuses primarily upon discharge and needs to be modified to apply more fully to serious sanctions.

C. We need to revise or delete footnote 2 concerning disability.

D. The post-tenure review process has been in place long enough that campuses are beginning to seek discharges of non-performing faculty. These tenured faculty have a property interest in their jobs, and thus are entitled to due process rights in connection with the discharge. The present process involves most, if not all, departmental faculty reaching a conclusion that a member of that department should be discharged for non-performance or neglect of duty. That recommendation, once accepted by the Provost, now comes before a faculty appeals committee, which not only looks at whether or not material procedural errors occurred, but also reviews the merits of the departmental decision to discharge.

The campus faculty appeals committee does not have the expertise in the faculty member's discipline. Where best should faculty self-governance be applied—at the departmental level or at the campus level? Should some type of deference be given to the departmental decision to discharge; or, should that decision be beyond the review of the appeals committee altogether? If the appeals committee is not permitted to review the substantive discharge recommendation, should the faculty member be permitted to appeal

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to a faculty committee on each negative post-tenure evaluation and annual follow-up evaluation? Another consideration is whether or not to change who has the burden of proof in post-tenure review cases. Now, as in any discharge case, the campus has the burden of proving by the greater weight of the evidence that the faculty member should be discharged. Would a way of addressing the departmental faculty's evaluation be to indicate that such a finding causes the faculty member to have the burden of proving to the appeal committee that he/she should not be discharged? It would place a Chancellor in an awkward situation to have two different groups of faculty coming to contrary conclusions about whether or not a faculty member should be discharged.

2) Section 604 - Non-Reappointments

A. As this Code section is now written, a non-tenure track faculty member (special faculty) has appeal rights to the Board of Governors when he/she is not reappointed. (Federal extension employees need to be added to the list of special faculty.) This result may not have been intended by the drafters. Should all or some non-tenure track faculty have appeal rights for non-reappointment? Does the duration of past service make a difference—so that after a certain number of years the non-tenure track faculty member would have more appeal rights than a short term member? Or should the distinction be between full time and part time non-tenure track faculty?

If the decision is that non-tenure track faculty should continue to have appeal rights, should they have all the grounds for appeal set out in Code 604B (which needs to be amended to include color and creed among the protected classes)? If not, what should be the grounds for appeal? Should these appeals go to the Board of Governors, or to the Board of Trustees for a final decision?

B. Should non-tenure track faculty who are dismissed during the period of a contract continue to have a Section 603 appeal, or should that be changed to a Section 604 appeal?

C. Regardless of the decisions about the above questions, since the School of the Arts and the School of Science and Math do not have tenure, obviously some appeal process should be granted their faculty.

D. Also, should non-tenure track faculty be permitted to serve on an “at will” basis rather than only for a “specified term?”

3) Section 609C - EPA Non-Faculty Appeals

What should the process and standard of review be for appeals by these employees? Should such appeals stop at the Board of Trustees level? Should the appeal be more like a Section 604 appeal?

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Harold L. Martin
Senior Vice President for Academic Affairs
UNC General Administration
P.O. Box 2688
Chapel Hill, NC 27515-2688
919-962-4614/Fax: 962-0120
hmartin@northcarolina.edu
(Lisa Adamson: adamson@northcarolina.edu)

Leslie Winner
Vice President & Legal Counsel
UNC General Administration
P.O. Box 2688
Chapel Hill, NC 27515-2688
919-4588/Fax: 962-0477
lwinner@northcarolina.edu
(Celeste Parish: cparrish@northcarolina.edu)

Charles Waldrup
Associate Vice President/Legal
UNC General Administration
P.O. Box 2688
Chapel Hill, NC 27515-2688
919-4551/Fax: 962-0477
cwaldrup@northcarolina.edu

David Broome
General Counsel
UNC-Charlotte
9201 University City Blvd.
515 Reese
Charlotte, NC 28223-0001
704-687-2553/Fax:
debroome@email.uncc.edu
(Patti Turner: paturner@email.uncc.edu)

Charles F. Harrington
Provost/Vice Chancellor for Academic Affairs
UNC-Pembroke
910-521-6211/Fax: 910-521-6176
Email: charles.harrington@uncp.edu
(Bobbie Scott: bobbie.scott@uncp.edu)

Hugh Hindman
Professor of Labor & Human Resources
Appalachian State University
Raley Hall
Boone N.C. 28608
828 262-2638/Fax: 828-265-8685
hindmanhd@appstate.edu

Gene Hughes, Professor
College of Business/Department of Management
East Carolina University
Harold H. Bate Building 3107
Greenville, NC 27858-4353
252-328-6026/Fax: 328-4094
hughesr@ecu.edu

Wanda Jenkins
Chief of Staff and Legal Counsel
Fayetteville State University
Chancellors Office, Barber Building
1200 Murchison Road
Fayetteville, NC 28301
910-672-1141/ 672-1200
wjenkins@uncfsu.edu

Mary Beth Kurz
Vice Chancellor and General Counsel
Office of Legal Affairs
North Carolina State University
Raleigh, NC 27695
919-515-3071/Fax: 919-515-3060
marybeth_kurz@ncsu.edu
(Denise Hall: denise_hall@ncsu.edu)

Pedro Martinez
Provost and Vice Chancellor for Academic Affairs
Winston-Salem State University
336-750-2200/Fax: 336-750-2202
martinezpl@wssu.edu
(London Mickle: micklel@wssu.edu)
(Annie McMorris: mcmorrisa@wssu.edu)

Larry Nielsen
Provost and Executive Vice Chancellor for Academic
Affairs
NC State University
919-515-2195/Fax: 919-515-5921
larry_nielsen@ncsu.edu
(Vicki Walton: Vicki_Walton@ncsu.edu)
(Retta Clemons: retta_clemons@ncsu.edu)

S. Delacy Stith
Assistant Professor, Sociology, Social Work &
Criminal Justice
Elizabeth City State University
203 Moore Hall Address
Campus Box 851
252-335-3896/Fax: 335-3331
cell: 757-576-0098
sdstith@mail.ecsu.edu