



POLICIES

The University of North Carolina
Board of Governors

700.4.1

Adopted 11/08/02

POLICY ON MINIMUM SUBSTANTIVE AND PROCEDURAL STANDARDS FOR STUDENT DISCIPLINARY PROCEEDINGS

The purpose of this policy is to establish legally supportable, fair, effective and efficient procedures for student disciplinary proceedings. The minimum standards for these proceedings are set out below. These minimum standards exceed the requirements of due process and therefore complying with requirements will also result in providing due process.

- I. Elements of Policy:
The two kinds of standards that must be followed are procedural standards and substantive standards.
- II. Procedural: The procedural standards require notice and an opportunity for a hearing. The formality of these provisions will vary depending on the seriousness of the offense. (See Sections V and VI. below.)
- III. Substantive: Substantive standards require that the decision reached be neither arbitrary nor capricious. Generally this means that there is some evidence to support the decision reached.

IV. Notice Requirements: Each constituent institution must define what conduct is prohibited and specify the types of sanctions that may be imposed for each category of prohibited conduct. Ranges of violations and ranges of sanctions are permissible. Progressive sanctions for multiple violations are also legitimate. A periodic review should be undertaken to insure that rules, codes and regulations are up to date and that the students have notice of any changes.

V. Requirements for Minor Violations:
A minor violation is one for which the possible sanctions are less than suspension and expulsion.

A. Procedural Requirements:

1. Charges may be brought by students, university officials, faculty members or staff members. The charge must be in writing and must include factual information supporting the allegation. Anonymous charges will not be permitted.
2. A designated university official will determine whether charge is to be pursued. This determination should be made within a specified amount of time (e.g. thirty (30) calendar days) after the initiation of the charge. Reasonable extensions of this time are permissible.
3. If a charge is to be pursued, it is then referred to a hearing official or body. The student must be notified in writing of charge, the referral and the hearing date. The hearing should not be scheduled for at least five (5) calendar days after the student receives the notice, unless the student agrees to an earlier hearing date. A committee member or the hearing official who has a conflict with, bias about or interest in the case should recuse himself. If the committee member or the hearing official refuses to recuse himself, a designated university official shall make the recusal decision.
4. The student may waive the hearing and accept a sanction proposed by a designated university official. The sanction must be within the ranges specified in accordance with paragraph IV above. The waiver and acceptance must be in writing and signed by the student.
5. If a hearing is held, it may occur as a meeting between the hearing committee/official and the student. It will be a closed

meeting. No attorneys are allowed in this proceeding except as provided in paragraph VII.A. below. The institution shall assure that students have the capability to present their evidence and defenses at the meeting or hearing. Witness testimony and documents may be received from both the designated university official and the student, who will both be present during all of the evidentiary presentation. At the end of the hearing, the committee/official will determine whether the designated university official has shown by a preponderance of the evidence that the student committed the offense charged. This determination must be based solely on the evidence presented at the hearing or meeting. The committee/official will also determine the appropriate sanction within the ranges specified in the definitions in IV above.

6. The decision may be final or it may be a recommendation for a final decision by a designated university official. The final administrative decision must be reached within a specified amount of time, not to exceed 45 calendar days after the date of the hearing. The final administrative decision must be transmitted to the student in writing within ten (10) calendar days of the date the decision is made, and it must contain a brief summary of the evidence upon which the decision is based.
7. Appeal rights must be specified in the decision letter. At least one level of administrative appeal must be permitted and the time in which to appeal and the permitted grounds for the appeal must be articulated. Further appellate opportunities shall be governed by the *Code* of the University of North Carolina.

B. Substantive Requirements: In each case there must be sufficient evidence supporting the decision and the sanction.

VI. Serious Violations:

A serious violation is one for which the possible sanctions include suspension or expulsion.

A. Procedural Requirements:

1. Charges may be brought by students, university officials, faculty members or staff members. The charge must be in writing and must include factual information supporting the allegation. Anonymous charges will not be permitted.

2. A designated university official determines whether charge is to be pursued. This determination should be made within a specified amount of time (e.g. thirty (30) calendar days) after the initiation of the charge. Reasonable extensions of this time are permissible. Written notice to the student must be provided if a decision is made to pursue the charge. The notice should specify the offense charged, the possible sanctions and a brief recitation of the factual allegations supporting the charge. For all charged offenses which could result in expulsion, the notice must include this possibility and must specify that expulsion precludes matriculation at any UNC constituent institution.
3. An active charge is then referred to a hearing official or body. The student must be notified in writing of the referral. This notice may include a hearing date. The hearing date may not be scheduled for at least ten (10) calendar days after the student receives notice of the referral, unless the student agrees to an earlier hearing date. Reasonable extensions of time for either party to prepare for the hearing should be allowed.
4. If a hearing date is not set in the notice of the charge, written notice of the hearing date must be sent to be received by the student not less than five (5) calendar days before the proceeding is scheduled for hearing.
5. The student may waive the hearing and accept a sanction proposed by a designated university official. The sanction must be within the ranges specified in accordance with paragraph IV above. The designated university official must determine that the waiver and acceptance is voluntary and that the charge and sanction have factual support. The waiver and acceptance must be in writing and signed by the student and the designated university official.
6. Prior to the hearing, the student must be given the opportunity to review any written evidence that will be used at the hearing and to obtain a list of witnesses.
7. A committee member or hearing official who has a conflict with, bias about or an interest in a case must recuse himself. If the committee member refuses to recuse himself, a designated university official will make the recusal decision. The student must also be given the opportunity to challenge a committee member or hearing official on these grounds. The decision on the challenge must be made by the committee or official within

five calendar days. If necessary, a substituted committee member or hearing official will be appointed.

8. The institution shall assure that students have the capability to present their evidence and defenses at the hearings. The method for assuring this capability may vary depending on the nature of the case and on the nature of the representation of the institution or the charging party. Each institution must have a policy delineating the participation or prohibition of attorneys. Representation or assistance by attorneys at the hearing is neither required nor encouraged.
9. The hearing will be closed to the public, unless a constituent institution's policy provides otherwise.
10. A transcript or other verbatim record of the hearing (but not of the deliberations) will be prepared. The institution will be responsible for the costs of this record.
11. At the hearing, a designated university official must present sufficient witness and/or documentary evidence to establish the violation. The student must be given an opportunity to question this evidence, either by direct questions or inquiries transmitted through the committee or hearing official.
12. The student must be given the opportunity to present any witness or documentary evidence that he offers, provided that the evidence is relevant to the charge or other evidence presented and does not otherwise infringe the rights of other students.
13. At the conclusion of the evidence, the committee/official will determine whether the charging official has shown by a preponderance of the evidence, or by such higher standard as the institution may adopt, that the student committed the offense charged. This determination must be based solely on the evidence presented at the hearing. The committee or official will also determine the appropriate sanction within the ranges specified in accordance with paragraph IV above.
14. The decision may be final or it may be a recommendation for a final decision by a designated university official. The final administrative decision must be reached within a specified amount of time, not to exceed forty five (45) calendar days after the hearing is completed. The final administrative decision must be transmitted in writing to the student within ten (10) calendar

days of the date the decision is made and must contain a brief summary of the evidence upon which the decision is based.

15. A vice chancellor or his delegate must make the final administrative determination in all suspension cases. The delegation may be to a student committee or a student/employee committee.
 16. The Chancellor or a vice chancellor must make the final administrative decision in all expulsion cases.
 17. Appeal rights must be specified in the final decision letter. At least one level of institutional appeal must be permitted, and the time limits in which to appeal and the permitted grounds for appeal must be articulated.
 18. Further appeals shall be governed by the *Code* of the University of North Carolina.
- B. Substantive Requirements: In each case there must be sufficient evidence supporting the decision and the sanction.

VII. Special Cases:

- A. If the offense charged is also the subject of pending criminal charges, the institution must allow an attorney advisor to accompany the student to the hearing. Unless institutional policy generally allows attorneys to participate, the attorney may not participate. The attorney may confer with the student during the hearing so long as the attorney does not address the hearing official or committee, other parties or witnesses and does not delay or disrupt the proceeding.
- B. Charges against multiple students involved in the same incident may be heard in a single case only if each student defendant consents to such a proceeding.
- C. Pursuant to the Campus Security Act, in cases of alleged sexual assault, the accuser and the accused are entitled to have the same opportunities to have others present during a disciplinary proceeding. D. Pursuant to FERPA, victims of crimes of violence must be notified of the results of the disciplinary proceeding of the alleged assailant. "Results" means the name of the student assailant, the violation charged or committed, the essential

findings supporting the conclusion that the violation was committed, the sanction if any is imposed, the duration of the sanction and the date the sanction was imposed.

- E. When a student with a disability is charged with an offense, the institution will assure that all requirements of Section 504 of the Rehabilitation Act and the Americans With Disabilities Act are met.

Effective Date: This policy applies to all offenses committed on or after July 1, 2003.

Code Appeal Routes for Student Issues

- I. Purpose: to clarify confusion and to specify particular appeal routes and appellate jurisdiction.
 - to eliminate simultaneous appeals from multiple Code sections
 - to establish one appeal route for student discipline
 - to prohibit grade appeals
 - to limit the grounds for appeal to violations of due process or material deviations from Board of Governors policy
 - to limit the types of appeals to the Board of Trustees and the Board of Governors
 - to eliminate appeals to the president
- II. Make 502 D. (3) the only student issue appeal route: collapse the present due process requirements in this section into the conduct provisions of Section XII of the Delegations to the Trustees.
 - A. Put discipline and conduct in same section for jurisdiction and appeal purposes.
 - B. Limit appeals to violation of due process and material deviations from Substantive and Procedural Standards adopted by the Board of Governors.
 - C. Limit appeals to Board of Trustees and Board of Governors to cases of suspension and expulsion.
 - D. Delete parts of 502 D. (3) and Section XII; make Section XII the provision covering student organizations and government. Limit appeals from those activities to Board of Trustees.
- III. Amend Delegation III of Delegations to Trustees to prohibit any grade appeals beyond institution. Leave it up to institution as to whether appeals to Board of Trustees would be permissible.
- IV. Amend 501 C. (4) to prohibit student appeals (except as may be allowable under 502 D. (3) and Delegations III and XII).

Proposed Amendments

A. Code Section 502 D. (3)

Subject to any policies or regulations of the Board of Governors or of the board of trustees, it shall be the duty of the chancellor to exercise full authority in the regulation of student affairs and ~~in matters of student~~ conduct and discipline in the institution. In the discharge of this duty, delegation of such authority may be made by the chancellor to faculty committees and to administrative or other officers of the institution, or to agencies of student government, in such manner and to such extent as may by the chancellor be deemed necessary and expedient. In the discharge of the chancellor's duty with respect to matters of student discipline, it shall be the duty of the chancellor to secure to every student the right ~~of to~~ due process. Appeals from these disciplinary decisions are allowable only on the following grounds:

- 1) a violation of due process; or
- 2) a material deviation from substantive and pProcedural sStandards adopted by the Board of Governors.

~~and fair hearing, the presumption of innocence until found guilty, the right to know the evidence and to face witnesses testifying against the student, and the right to such advice and assistance in the individual's defense as may be allowable under the regulations of the institution as approved by the chancellor. In those instances where the denial of any of these rights is alleged. Where the sanction is suspension or expulsion, the board of trustees shall have a policy specifying whether an appeal is allowable. No appeal to the president is permitted. Appeals from decisions of the board of trustees to the Board of Governors are allowable where the sanction is expulsion. When the sanction is expulsion, the final campus decision is appealable to the Board of Governors.~~

~~, it shall be the duty of the president to review the proceedings.~~

B. Delegation III

III. ACADEMIC DEGREES AND GRADING

Subject to authorization by the Board of Governors of the nature and general content of specific degree programs which may be offered by an institution, each institution shall determine whether an individual student shall be entitled to receipt of a particular degree. Each institution also shall determine what grade a student will be assigned in a particular course. No appeals from these decisions are allowable to the president or to the Board of Governors. ~~from such an institutional decision shall lie beyond the board of trustees.~~

C. Delegation IV

XII. ~~STUDENT CONDUCT, ACTIVITIES AND GOVERNMENT~~

Under such policies as may be prescribed by the Board of Governors and the board of trustees, the chancellor shall be responsible for the regulation ~~of student conduct,~~ the and approval of organized, institutionally-recognized student activities, ~~and the~~ definition of roles and functions of any institutionally-recognized system of student

self-government and student participation in the governance of any aspect of the institutional programs and services. No appeal concerning such activities are allowable to the president or to the Board of Governors. ~~shall lie beyond the board of trustees, unless it is alleged that the policy, action or decision being appealed violates any law or constitutional provision of North Carolina or of the United States, the university Code, or policies of the Board of Governors.~~

D. Code Section 501 C. (4)

Subject to such regulations and limitations as may be prescribed by the Board of Governors, the facultyies, and staffs, ~~and student bodies~~ of the constituent institutions, ~~or any member thereof~~, may have the right to appeal the disposition of grievances to the chancellor, and from the chancellor to the president, and from the president to the Board of Governors; provided, that appeals based on policies, rules, or regulations adopted by the board of trustees shall be addressed initially to the chancellor, and from the chancellor to the board of trustees, and, where allowed, from the board of trustees to the Board of Governors; however, all appeals addressed to or requests for hearings by the Board of Governors, from whatever source, shall be transmitted through the president.

**REPORT OF
THE UNIVERSITY OF NORTH CAROLINA
TASK FORCE
ON
FACULTY DISPUTE RESOLUTION
November 26, 2002**

This task force of representative faculty members and administrators¹ was commissioned by President Broad to develop suggestions for improving university policies and procedures concerning the resolution of faculty disputes. The inquiry was prompted by recurring complaints from some faculty members, administrators, and members of governing boards about various aspects of our faculty grievance and appeal systems.

The inducements to maintain effective internal dispute-resolution programs have been described by the Board of Governors as follows:

First, as a matter of good personnel practice, any employer ought to provide some credible and practical basis for addressing employee concerns within the workplace; promptly and fairly remedying legitimate complaints and resolving disruptive differences can enhance the effective performance of our mission as an educational enterprise. Second, when used effectively such internal processes permit all concerned parties to avoid the expenditure of valuable resources, both financial and human, that often attends resort to external forums, such as courts of law and governmental enforcement agencies. Third, with respect to certain types of controversies (e.g., disciplinary proceedings that may entail depriving a person of property or liberty interests) we are required by law to provide an internal due process inquiry.²

In that connection, the Board of Governors made the following observation:

When framing our system of governance, the Board of Governors invested heavily in the idea that persons of intelligence and good will ought to be able to work out many of their differences through relatively informal University-sponsored procedures.³

We agree that good will is a precious commodity that must be fostered, nurtured, and enhanced at every opportunity. But goodwill needs to be reinforced with professionalism. The dispute resolution process of the university deals with important matters, frequently

¹ Task force members are listed at the end of the report.

² Appellate Review under Section 501C(4) of the *Code, The University of North Carolina Policy Manual*, §100.3.1.

³ *Ibid.*

critical to the careers of individual employees as well as to the general integrity of the university community. Members of this community are entitled to expect that when hearings are held the hearing committees are fully equipped to perform their difficult task; that when mediation is used it will involve trained mediators; and that all participants in dispute resolution processes – faculty members, chancellors, trustees, and governors – understand their important roles.

The degree of satisfaction with current procedures appears to vary markedly across the 16-campus system. At some campuses the process works well, to the mutual satisfaction of faculty and administration, as evidenced by the fact that the faculty hearing committees³ and administrators usually agree on the proper disposition of complaints and there are few appeals to the boards of trustees and the Board of Governors. But at other campuses it appears that there is a high level of dissatisfaction, as attested by frequent disagreements between faculty hearing committees and administrators⁴ and numerous appeals to the governing boards. There also are general indications that the participants (grievants, respondents, and hearing committee members) are not well informed about the nature and purpose of such procedures and, thus, not equipped to contribute effectively to their implementation. Questions also have been raised about the extended appellate processes that may be invoked for reconsideration of campus decisions, successively by boards of trustees, the president, and the Board of Governors.

From the faculty perspective, criticisms of existing procedures tend to focus on the increasingly legalistic and time-consuming nature of the inquiries required of faculty hearing committees and the perceived failure or refusal of administrators to accord proper deference to the findings, conclusions, and recommendations of such committees. Those concerns have promoted interest among some faculty members in the use of arbitration or other modes of decision making, which could relieve time pressures on the faculty, expedite decision-making, and remove administrators from or modify their role as final decision makers.

The most persistent complaint from administrators and trustees focuses on indications that faculty hearing committees sometimes do not effectively perform their key role in addressing the faculty member's grievances, e.g., they do not have an adequate understanding of the nature of their responsibilities or of the scope of their jurisdiction; they do not know how to conduct effective hearings; and they do not produce carefully reasoned, well-documented and clearly articulated conclusions and recommendations that effectively respond to the issues before them. As a result, the committee product does not

³ "Faculty Hearing Committees" unless otherwise limited, includes those committees established to hear disputes arising under Sections 603, 604, and 607 of the *Code of the University of North Carolina*.

⁴ The Board of Governors policy on Recording and Preserving Evidence in Faculty Grievance Cases noted that "While the conclusions and recommendations of the faculty committee are entitled to great deference, the chancellor is responsible for determining whether the available evidence in fact supports the disposition of the case that has been advised by the faculty committee." *Policy Manual*, § 100.3.4.

provide the chancellor or other responsible administrator with useful assistance in resolving the dispute. A related concern is that the hearing committee produces the legal record on which all further appeals are based, and these records are often not adequately assembled.

Our study of these concerns has produced proposals for changes in Board of Governors' policy, suggestions for actions to be taken by the Office of the President, and suggestions for campuses to consider adopting that would improve their internal dispute-resolution mechanisms. Our suggestions focus on three ways in which university programs might be improved:

- I. Promoting more frequent and effective use of mediation as an alternative to adversarial hearing procedures.
- II. Preparing faculty hearing committees and other participants better to perform their central role in the formal grievance process.
- III. Streamlining the appellate process to eliminate unnecessary layers of appeals.

I. MEDIATION

Various members of the University community have expressed the view that dispute-resolution techniques other than those involving adversarial hearings before faculty committees should be considered in connection with any effort to improve procedures for resolving faculty employment problems.⁵ The two possibilities most often mentioned are arbitration and mediation. The task force does not recommend consideration of arbitration at this time.⁶

Mediation is a procedure whereby disputing parties enlist the assistance of a neutral party to help them in achieving a voluntary, bilateral agreement that finally and definitively resolves all or portions of their dispute, without resorting to adversarial procedures such as administrative hearings or litigation. Any such mediated agreement that the parties are able to negotiate typically is embodied in a binding agreement.

The appropriate functions of a mediator are to assist the parties in defining, clarifying, communicating about, and ascertaining the substantiality and relevance of the issues that appear to divide them and to aid the parties in generating, considering, and communicating with each other about possible bases for resolving the dispute.

⁵ We believe that alternative forms of dispute resolution may also be useful in resolving disputes between EPA and SPA employees.

⁶ The task force has tentatively concluded that arbitration is not the best process to use in this context because under arbitration (1) the important role of the faculty hearing committee would be diminished, (2) the administration would not have the final say regarding proper disposition of a complaint, and (3) it might be necessary to change North Carolina law to permit the utilization of "final" decision making by an arbitrator in situations involving state employment. The use of arbitration may, however, warrant further study.

A mediator typically performs his or her function by sponsoring one or more meetings, some in which both parties participate and some in which the mediator meets separately with each party. One role played by the mediator can be as a "go between" who attempts, clearly and accurately, to convey privately to each party the concerns, views, and proposals gleaned from separate conversation with the other party, thereby accomplishing more effective communication and understanding than might be possible in a joint meeting of the parties during the initial stages of the process. The resulting enhanced understanding of the issues that divide them and of the feelings that underlie their respective perceptions of the issues may help the parties achieve a more focused and effective consideration of what bases for settlement realistically might be available. A mediator may also make suggestions to the parties, either separately or jointly, about bases for settlement that they may wish to consider. Consistent with one's proper role, a mediator must never seek to compel or coerce a particular outcome or otherwise appear inappropriately to favor the position of either party over that of the other party. The mediator's responsibility is to aid the parties in working out their differences to their mutual satisfaction, if possible.

As is obvious from the foregoing, mediation has a better chance of success when both parties trust the mediator, i.e., when they have sound basis for believing, and actually do believe, in the mediator's neutrality, impartiality, and integrity. Successful mediators also must have highly-developed skills as careful listeners, effective communicators, and imaginative problem solvers.

Existing University of North Carolina policy envisions a mediation role for designated faculty committees in non-disciplinary proceedings as a possible first effort before resort to an adversarial hearing process. The responsible committee is expected to exercise independent judgment about whether the particular dispute appears to present a promising subject for mediation. Thus, mediation is not automatically undertaken in all cases, even if one or both of the parties are amenable to such an effort. In practice, however, mediation, as presently practiced within the university, has varying levels of effectiveness among the constituent institutions. There may be several explanations for this.

First, casting a faculty committee in such a role may not satisfy the basic requirement that both parties to a dispute be confident about the neutrality and impartiality of the third-party mediator. Whether this perception is well founded or not, the members of a faculty committee may be perceived, by administrative officials on some campuses, as having a predisposition to favor their faculty colleagues. Thus, those administrators might decline to participate voluntarily in mediation sponsored by such a faculty committee. A second problem with the use of faculty committees under current university arrangements is that the committee authorized to mediate is also empowered, ultimately, to adjudicate the controversy (i.e., to conduct an evidentiary hearing as the basis for conclusions and recommendations about an administrator's imposed disposition of the controversy). Instructions from the Board of Governors are designed to avoid that difficulty by suggesting that different members of a faculty committee should be reserved to perform

the different functions of mediation and adjudication. However, such precautions might not be sufficient to allay a party's concern about trusting an informal process that invites candid disclosure and frank discussion with a person identified with the committee that later may "sit in judgment" of the matter during an adversarial hearing process. A final concern is that most committee members are not trained as mediators and may not have the skills necessary to bring a dispute to resolution.

We believe more frequent and effective use might be made of mediation in the university setting if there were regular access to formally trained mediators, not associated with a faculty hearing committee⁷, who would be perceived by participating parties as being impartial. The mediators could be trained members of the faculty or staff, outside mediators from the community, or mediators from other campuses within the University. On a case-by-case basis, the parties to a dispute could jointly select a mediator or mediators from a previously identified panel of available mediators. If agreement could not be reached, a strike process or other selection method chosen by the campus could be used to pick the mediator or mediators.

Every mediator in the pool should have successfully completed formal mediation training substantially equivalent to that required for certification by the Administrative Office of the Courts or been formally trained in mediation specifically designed for university faculty employment.⁸ Based on the size of the campus and the perceived need, each campus would determine the number of campus mediators necessary. The cost of training those mediators would be borne by the university with the understanding that university mediation would become part of the mediator's job description and the mediator would not, with the exception of expenses, otherwise be compensated for university mediation. When third-party mediators from the community are used, the mediator's fee should be paid in such a way that ensures the mediator's impartiality. Since payment of the fee by the campus might be perceived as unduly influencing the mediator, any payment for the services of a mediator should come from funds maintained by the Office of the President for that purpose. Each participating campus would annually pay into the fund using an agreed upon formula.

The task force believes that an institution should, at its discretion, be able to require that the parties to a dispute arising under Section 607 of the *Code* mediate their dispute as a prerequisite to access to the formal faculty grievance process.⁹ In other words, while there can be no requirement that forces a mediated agreement on a party, there can be

⁷ A campus may, however, elect to have an elected faculty grievance committee control the campus's mediation mechanism as part of its responsibilities under Section 607 of the *Code*.

⁸ Training, ideally, should also involve a period of "apprenticeship" where the individual can observe one or more campus mediations or serve as a co-mediator with a more experienced individual.

⁹ Campus policies would have to be amended, among other things, to suspend the time limit for prosecuting a grievance through the system pending the outcome of the mediation.

mechanisms that require the parties, at least, to participate in mediation about the dispute. The mediator could then assess the value of continuing the mediation process. Only after the mediator reasonably determines that the parties are not amenable to a settlement would the mediation end and the formal grievance hearing process begin.

For mediation to be a viable alternative to the formal hearing process, the parties must have confidence that the mediation process, if unsuccessful, will not adversely affect their interests in any later steps in the grievance. Therefore, the campus mediation process must be designed to assure the parties that:

1. a decision by either party not to pursue mediation beyond the campus required minimum will not be held against that party in any way;
2. no "blame" is to attach to either party if mediation does not produce a settlement;
3. no "record" of the failed mediation process is to be produced by the mediator other than a simple, unelaborated written statement to the appropriate authority necessary to invoke the next step in the grievance process, i.e., that mediation was attempted but settlement was not reached;
4. no authority is to take account in subsequent proceedings either party's effort to blame the other for a failed mediation effort;
5. the mediator may not be called as a witness in any subsequent proceeding; and,
6. nothing done or said by either party during a mediation process can be referred to or used against a party in any subsequent procedure.

Some disputes are not likely to be amenable to mediation because the resolution of the dispute, by its nature, will result in a clear winner and loser and there is no compromise available to mediate. Therefore, in the faculty dispute resolution arena, mediation should be required only in disputes arising under Section 607 of the *University Code*. Mediation may be available but should not be required in cases involving dismissal or imposition of serious sanctions under Section 603 of the *Code*, nonreappointment cases under Section 604 of the *Code*, or termination of faculty employment under Section 605.¹⁰

Finally, an adopted campus mediation policy must provide that any mediation agreement that obligates the university must have the university's approval (i.e., the agreement must be signed by a university official with the authority to bind the university concerning the particular agreement).

II. ASSISTANCE TO FACULTY HEARING COMMITTEES AND THE DISPUTING PARTIES

Consistent with majority practice within American higher education, the Board of Governors requires the use of elected standing committees of the faculty to perform the essential function of conducting evidentiary hearings on which such committees base findings of fact and make recommendations for appropriate administrative disposition of controversies. Such cases, variously involving disciplinary proceedings,

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A campus may, however, elect to permit voluntary mediation in such cases.

nonreappointment decisions, and grievances concerning terms and conditions of employment, are time-consuming and can present complex and difficult questions of fact, policy, and law.

One major objective of the task force has been to determine ways in which faculty hearing committees might be better equipped to address their functions. The general problem appears to be an absence of effective training and guidance for such committees. Without such training they may go astray, either by not understanding their functions and the issues properly before them or by not knowing how to conduct effective hearings. Currently, the University is ill equipped to provide that sort of guidance to faculty committees. The committees tend, predictably, to be suspicious of offers of assistance from the administration, including helpful orientation and advice that otherwise could be made available by campus attorneys.

Likewise, and even more understandably, the parties to the dispute -- typically, a faculty member as grievant and an administrator as respondent -- have even less experience in the process and far less understanding of their role in assuring the coherent presentation of that relevant information necessary for the hearing committee to make a recommendation and for any subsequent appellate body to make a decision.

We have concluded that the faculty hearing process could be improved and facilitated by taking four actions: First, develop a manual designed to provide detailed guidance to the committees, affected individual faculty members, and relevant administrative officers concerning the internal university dispute-resolution processes. Second, provide training and training materials for hearing committee members and department chairs and deans, based on the manual. Third, increase the term of service for faculty grievance committee chairs to four or five years to further leverage their training and experience. Fourth, supplement the guidance supplied by a written manual by providing access to expert advice from individuals more fully trained in the administration of dispute-resolution systems. We examine each of those complementary possibilities in turn.

A. DEVELOPING A DISPUTE-RESOLUTION MANUAL

We believe one key to improving the faculty dispute-resolution process is a well crafted how-to manual covering the grievance process. The purpose of such a manual is to offer guidance to faculty grievants, respondents and hearing committees. Such a manual should address the nature of the issues presented by the various types of cases, the components of and techniques for insuring an effective and credible hearing, the applicable substantive policies and legal principles, and the characteristics of a cogent and useful statement of findings and conclusions.

With respect to any manual contents not controlled by policies or procedures of the Board of Governors or by the respective institutional boards of trustees, a constituent institution might choose to adopt all or portions of the model manual, with or without modification, to supplement the institution's dispute-resolution procedures. Once adopted by a campus, such a manual should be widely publicized and copies should be made available for study and use by interested members of the academic community.

B. TRAINING HEARING COMMITTEES, DEANS, AND DEPARTMENT HEADS

Many of the constituent institutions provide some training for new members of faculty hearing committees. This training typically consists of lectures and presentations by university counsel or other subject-matter experts on the various aspects of the hearing process. However, even on campuses that provide training, it is sporadic and rarely coincides with the beginning of a hearing committee member's term. Only a few campuses provide any training for deans and department heads on their role in this process.

The task force believes that it is essential for members of hearing committees, deans, department heads, and other interested parties to have ready access to training materials (i.e., written materials and videos), consistent with the dispute-resolution manual, that explain, in lay terms, how to prepare for and conduct a grievance hearing. The gathering, publication, and distribution of the materials should be a University project that supplements any materials, lectures, or presentations an individual campus may wish to use. Additionally, the University should provide university-wide training annually for hearing committee members and other interested parties. This training should be videotaped and made available for review on the campuses.

C. EXTENDING THE SERVICE OF FACULTY HEARING COMMITTEE CHAIRS

Certainly, the most readily available expert guidance is that coming from an experienced, properly trained, member of the hearing committee itself. North Carolina State University, for example, is considering a procedure under which committee chairpersons would be selected for relatively long periods of time (e.g., five years) and would be offered intensive orientation and training through a collaborative faculty-administration program. Providing training for chairpersons is considered more feasible and practicable than attempting to train entire committee memberships, given the required investment of time and the uncertainty about when and if such a committee will be needed. Having invested in such training, the institution thereafter has relatively long-term access to individuals who can provide leadership of faculty hearing committees. We believe that each campus faculty should be required to consider amending its bylaws to provide for the selection of committee chairs who have received appropriate training for four or five-year terms.

D. PROVIDING ACCESS TO EXPERT GUIDANCE

While training and the use of a manual reasonably would be expected to improve the capacity of a faculty hearing committee to effectively meet its important responsibilities, it also would be helpful, in our opinion, to provide such committees with access to outside guidance and advice from knowledgeable persons well versed in hearing procedures. Several possibilities for providing such assistance might be considered.

Regardless of the guidance provided by the chairs and the training provided for the hearing committees, we recognize that there will often be no adequate substitute for advice from counsel. However, only a few of our campuses have a sufficiently large legal staff to provide different attorneys to advise the faculty hearing committee, the respondent administrator (where permitted or appropriate), the chancellor, and the Board of Trustees. Even in those instances where a campus attorney may appropriately advise the hearing committee, there may be, on some campuses, a perception among the committee members that the attorney represents the interests of the administration and may not be providing the neutral advice sought by the committee. There are, however, over 26 attorneys within the University (representing 14 of the constituent institutions) who could be a resource for the hearing committees. Based on availability and workload, the Office of the President could maintain a list of campus attorneys available to assist hearing committees (normally by phone conference but possibly, on difficult cases, in person) on procedural issues of concern to the committee or its chair. The president's office would be responsible, at the request of the hearing committee chair, for finding an available attorney from the list and coordinating, as necessary, the initial contact between the chair and the selected attorney.

Finally, we believe that the campuses should develop a plan for the more effective use of experienced campus personnel to serve as mentors to respondent department heads and deans, and committee chairs. Every campus has personnel who have experience in this area, including former committee members or chairs, or current or former administrators who have responded to grievants on behalf of the institution. The thoughtful guidance provided by these experienced individuals could result in better prepared grievants and administrator/respondents and hearings that clearly focus on the issues at hand.

E. USE OF ATTORNEY BY THE PARTIES

The degree to which attorneys assist the disputing parties in grievance hearings under Section 604 and 607 of the *Code* varies from campus to campus.¹¹ While every campus permits the faculty grievant to have an assistant (who may be an attorney) at the hearing, some campuses do not permit that assistant to address the committee, ask questions, or otherwise participate actively in the hearing. Those campuses that permit the assistant to participate often find that, when the assistant is an attorney, he or she tends to dominate the proceedings. This is true because the respondent administrator rarely, if ever, has the active assistance of counsel and the hearing committee often defers to the lawyer. Since the premise upon which our dispute resolution process is based is that "*persons of intelligence and good will ought to be able to work out many of their differences through relatively informal University-sponsored procedures*" we believe those campuses that do not permit an assistant to actively participate in a hearing follow the best practice. However, in those instances where an attorney will, in fact, be permitted to represent a grievant, the campus should provide legal counsel for the respondent.

¹¹ Uniformly, attorneys are permitted on both sides for appeals of dismissals or imposition of serious sanctions under Section 603 of the *Code*.

III. STREAMLINING THE APPELLATE PROCESS

One recurring complaint across the University about the faculty dispute resolution process is the length of time required to reach a final resolution of disputes. As currently contemplated by Section 501 C (4) of the *Code*, every faculty grievant, regardless of the complaint, is entitled to a review by a faculty hearing committee (although not necessarily a hearing), a decision by the chancellor or other senior campus administrator, and access to appellate review by the president or the Board of Trustees (depending on the type of complaint) and the Board of Governors.

One way to avoid protracted appeals is for the faculty member to be confident that the recommendation of the hearing committee has been accorded due deference by the chancellor. Because we believe a chancellor should give appropriate deference to the recommendation of a hearing committee, the task force encourages the chancellor, if he or she is considering taking an action that is inconsistent with the hearing committee's recommendation, to communicate or consult with the hearing committee, either in person or in writing, regarding the chancellor's concerns.

While every complaint is important to the grievant, we do not believe that every complaint warrants the considerable amount of time on the part of trustees, the president, and the governors necessary to review the decisions of those campus administrators charged with the responsibility and authority to run the institution. We, therefore, recommend that the *Code* and policies of the University be amended¹² to limit appeals as follows:

1. Complaints under Section 607 of the *Code* (those related to a faculty member's employment status and institutional relationships) could be appealed beyond the chancellor only in those instances when there is a disagreement between the faculty hearing committee and the chancellor. In those instances where there is a disagreement, appeal would lie with the Board of Trustees and the board would review the record using a "clear error" standard. There would be no appeal beyond the trustees.
2. Grievances concerning nonreappointments under Section 604 of the *Code* would be appealed directly from the chancellor to the Board of Governors. As is currently the policy, the board would review only those cases that met certain jurisdictional thresholds.

These steps would eliminate the president's role in the internal appellate process, with the trustees reviewing Section 607 cases currently appealed to the president. However, the

¹² Policy changes would not affect grievances started before the changes became effective.

trustees would not review nonreappointment cases as they currently do. The Board of Governors would continue to screen cases for review using jurisdictional standards.¹³

RECOMMENDATIONS AND ACTION STEPS

In order for the task force recommendations to be adopted, we believe it is necessary that this report, in draft form, be widely distributed throughout the University for review and comment by, among others, the faculty senates, campus administrators, and trustees. Based on the comments and critiques received, the task force will make final revisions and present this report to the president for consideration by the Board of Governors. Once adopted in principle by the board, we anticipate that the following steps would be necessary to fully implement the task force recommendations:

MEDIATION

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| Recommendation #1: | Develop Board of Governors' policy to require each campus to create plans for a viable mediation system that permits, at the campus's option, mandatory mediation in Section 607 grievances and voluntary mediation of other grievances. |
| Action: | Office of the President legal staff draft and present to the Board of Governors Committee on University Governance for consideration. |
| Recommendation #2: | Amend Board of Governors' policies to suspend time limits on appeals during mediation. |
| Action: | Office of the President legal staff draft changes to the board policy on <i>Time Limits for Appeals</i> and present to the Board of Governors Committee on University Governance for consideration. |
| Recommendation # 3: | Each campus will make decisions necessary to implement a mediation process. |
| Action: | Each campus should decide whether mediation of Section 607 grievances will be mandatory or voluntary, under what other circumstances mediation will be available, what source of mediators will be used by that campus, how mediators will be trained, and other procedures necessary to implement a mediation program. Campuses are encouraged to preclude attorneys from actively participating in mediation sessions. |

¹³ See Appellate Review: Under Section 501C(4) of the *Code, The University of North Carolina Policy Manual*, §100.3.1.

- Recommendation #4: **For campuses so electing, amend campus policies to mandate mediation in Section 607 grievances, to permit voluntary mediation of other grievances, to suspend time limits for filing or processing appeals while mediation is in progress, and to determine whether to use campus-based mediators, University mediators, outside mediators, or some combination thereof.**
- Action: Campus determine advisability of mandating mediation.
- Action: Campus amend faculty handbook and other policies as necessary to implement the adopted mediation process.
- Action: Office of the President collect or develop forms that may be used in a campus-based mediation process.
- Recommendation # 5: **Provide training for campus mediators.**
- Action: Campuses determine the number of mediators reasonably expected to need to be trained.
- Action: Office of the President draft and issue Request for Proposals to select mediation trainers for use by campuses.
- Recommendation #6: **Determine how to provide outside mediators for use by campuses.**
- Action: Office of the President assess the desirability of using a single RFP to contract with organizations for multi-campus use for campuses electing not to use campus based mediators. Other campuses may decide to use mediators based in their communities.
- Recommendation #7: **Develop pool of other campuses' mediators for use by campuses.**
- Action: Office of the President maintain list of University employees trained in mediation who are willing to serve as mediators on other campuses.
- Recommendation #8: **Establish a pool of funds at the Office of the President from which to pay outside mediators.**
- Action: If funds are not available from the Office of the President to pay for outside mediators, then the Office of the President, with input from campus financial officers, should develop a formula for annually charging the campuses that use outside mediators for mediation costs, based on study of cost of outside mediators.

ASSISTANCE TO THE HEARING COMMITTEES

- Recommendation #9: **For campuses so electing, amend policies to provide for hearing chairs to serve four or five-year terms.**

- Action: Campus determine advisability of extending length of terms for committee chairs.
- Action: Campus amend faculty senate rules and other policies as necessary to elect hearing committee chairs for four or five-year terms.
- Action: Office of the President develop training, available to all campuses, for hearing chairs.
- Recommendation #10: **Develop a dispute resolution manual.**
 - Action: Task force develop an outline for a manual and assign a subcommittee to submit drafts for consideration.
 - Action: Submit draft manual to campus attorneys and hearing committees for comments.
 - Action: Submit manual to governors and trustees for information.
- Recommendation # 11: **Develop training and training materials for use by hearing committees and others.**
 - Action: Task force collect available training materials.
 - Action: Task force develop a plan for the type of training and training materials necessary.
 - Action: Office of the President identify a source of funds to purchase materials and to develop original written, video, and on-line training aids.
- Recommendation # 12: **Develop a pool of campus attorneys available to assist hearing committees as necessary.**
 - Action: Office of the President contact all university attorneys (through senior counsel) to determine availability for assisting hearing committees.
 - Action: Office of the President draft procedures for campus counsel or hearing committee chairs, to request assignment of counsel to assist the committee.
- Recommendation #13: **Encourage the use of campus mentors for department heads and deans, and hearing committee chairs and members.**
 - Action: Campuses to develop a list of personnel experienced in faculty hearings and ask those personnel to serve as mentors.
- Recommendation # 14: **Campuses should review policies that permit attorneys for faculty members to actively participate in hearing, and, if so permitted, determine how to provide legal representation for the respondent administrator.**

Action: Campuses review, and if appropriate, modify policies concerning use of counsel.

Action: Office of the President determine possible options for assisting campuses in providing occasional legal counsel assistance to respondent administrators.

STREAMLINING THE APPELLATE PROCESS

Recommendation #15: **Chancellors are encouraged to consult with hearing committees, in person or in writing, if they are considering taking an action that is inconsistent with a committee's recommendation.**

Action: Each campus should review its appeals procedures to assure that they are clear as to how, and under what circumstances, the chancellor may consult or communicate with a hearing committee before the chancellor reaches a decision.

Recommendation # 16: **Amend Section 501C(4) of the *Code* to limit appeals under Sections 604 and 607 as follows:**

- Complaints under Section 607 of the *Code* (those related to a faculty member's employment status and institutional relationships) could be appealed beyond the chancellor only in those instances when there is a disagreement between the faculty hearing committee and the chancellor. In those instances where there is a disagreement, appeal would lie with the Board of Trustees and the board would review the record using a "clear error" standard. There would be no appeal beyond the trustees.
- Grievances concerning nonreappointments under Section 604 of the *Code* would be appealed directly from the chancellor to the Board of Governors. As is currently the policy, the board would review only those cases that met certain jurisdictional thresholds.

Action: Office of the President legal staff draft to the *Code* and present to the Board of Governors Committee on University Governance for consideration.

Recommendation # 17: **Develop and maintain a database of the numbers, types, and dispositions of campus grievances to determine, prospectively, how the University dispute resolution**

process is working. Report findings to the governing boards.

- Action: Office of the President develop a database with appropriate fields for use by each campus in tracking information about the campus process.
- Action: Each campus develop procedures for accurately maintaining the database.
- Action: Office of the President, annually, consolidate the data collected and report findings.

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