



TRANSMITTAL LETTER

The University of North Carolina
Office of the President

Transmittal Number 29

March 30, 2004

Subject:

101.3.2 Grievances Filed Pursuant to Section 607 of *The Code*

Included, for your information, is 1 policy amended by the Board of Governors at its March meeting.

101.3.2: Grievances Filed Pursuant to Section 607 of *The Code* was amended by the Board of Governors on March 19, 2004. Please contact Leslie Winner, Vice President for Legal Affairs at 919-962-4588 with any questions.

Adopted 03/21/03
Amended 06/18/03
Amended 03/19/04

GRIEVANCES FILED PURSUANT TO SECTION 607 OF *THE CODE*

I. The Purpose of the Grievance Procedure

Section 607 of the Code provides a process for faculty members to seek redress concerning employment related grievances. The function of the grievance procedure is to attempt to reach a consensual resolution of the dispute and, if that fails, to determine whether the contested decision was materially flawed, in violation of applicable policies, standards or procedures. The grievance process is not intended to second-guess the professional judgment of officers and colleagues responsible for making administrative decisions.

II. Initiation of the Grievance Process

- a. Any faculty member who has a grievance, as defined in Section 607(3) of *The Code*, may file a petition for redress in accordance with the procedure established by the constituent institution. The petition of the faculty member shall be in writing and shall set forth in detail the nature of the grievance and against whom the grievance is directed. The petitioner shall set forth any information that he or she considers pertinent to the grievance. The faculty member shall deliver a copy of the petition to the respondent administrator by certified mail or by another means that provides proof of delivery.
- b. When a decision not to promote is made at the same time as a decision not to reappoint a faculty member, all challenges to those decisions will proceed pursuant to Policy 101.3.1. When a decision not to promote is not made as a part of a reappointment decision, campus policy shall determine which faculty committee has jurisdiction to hear such disputes.
- c. Unless the parties to the grievance have participated in mediation prior to the faculty member's filing the petition, before taking any action on the petition, the faculty grievance committee shall refer the matter for mediation in accordance with the policies of the constituent institution.

III. Mediation of Grievances

- a. Mediation is a procedure in which 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 grievance hearings, administrative hearings or litigation. Any such mediated agreement that the parties are able to negotiate will be embodied in a written agreement.
- b. 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 the parties and to aid the parties in generating, considering, and communicating with each other about possible bases for resolving the dispute.
- c. Each constituent institution will have a policy either that requires the parties to a dispute made under Section 607 to participate in mediation as a prerequisite to access to the formal faculty grievance process or that permits the parties voluntarily to do so. While there can be no

requirement that forces a party to reach a mediated agreement, a constituent institution may have a policy that require the parties to participate in a mediation process about the dispute. If a constituent institution requires participation in mediation, the mediator may assess the value of continuing the mediation. If the mediator determines that the parties are not amenable to a settlement, then the mediator may end the mediation, and the formal grievance hearing process will then begin.

- d. Each constituent institution will have a mediation process available which:
 1. Has available the number of campus mediators necessary based on the size of the campus and the estimated need. Mediators may be trained members of the faculty or staff, outside mediators from the community, or mediators from other campuses within the University. Mediators may not be members of the faculty hearing committee that hears Section 607 grievances.
 2. Requires every mediator to have successfully completed formal mediation training substantially equivalent to that required for certification by the North Carolina Administrative Office of the Courts or to have been formally trained in mediation specifically designed for use in a university setting.
 3. Determines under what circumstances, if any, attorneys will be allowed to participate in the mediation process.
 4. Assures the parties that a decision by either party not to pursue mediation beyond the campus required minimum will not be held against that party in any way and that no blame will be attached to either party if mediation does not produce a settlement.
 5. Provides that no record of a failed mediation process will be produced by the mediator other than an unelaborated written statement to the appropriate authority necessary to invoke the next step in the grievance process, i.e., that mediation was attempted but settlement was not reached.
 6. Prohibits the mediator from being called as a witness in any subsequent proceeding, and prohibits anything done or said by either party during a mediation process from being referred to or used against a party in any subsequent proceeding.
- e. The adopted mediation policy of each constituent institution must provide that any mediation agreement that obligates the university must be signed by a university official with the authority to bind the university concerning the particular agreement.
- f. Any time limit adopted by a constituent institution or by Board of Governors Policy concerning the formal resolution of Section 607 grievances will be suspended for the duration of a mediation process being held pursuant to this policy.

IV. Administrative Decision

- a. If the grievance is not resolved through the mediation process, then the matter will be reviewed by the faculty grievance committee established pursuant to Section 607(1) of *The Code*.
- b. Standard for determining contested grievances. In order to prevail in the grievance process, a faculty member must establish that the faculty member experienced a remediable injury attributable to the alleged violation of a right or privilege based on federal or state law, university policies or regulations, or commonly shared understandings within the academic community about the rights, privileges and responsibilities attending university employment. Examples would be if the decision-maker disregarded an established standard for evaluation, relied on

impermissible considerations such as race or sex, or failed or refused to consult with or receive information from mandated advisory bodies.

- c. If mediation fails to produce a voluntary resolution, the faculty grievance committee must decide whether a hearing should be held in response to the petition. The submission of a petition shall not result automatically in an investigation of or hearing on the petition. The committee shall determine whether the facts alleged merit a detailed investigation. The committee is to consider the content of the grievant's petition. Assuming the truth of the information contained in the petition, the committee is to determine whether the contentions advanced by the grievant justify a hearing. A petition properly is dismissed if the grievant fails to allege an injury that would entitle the faculty member to relief in accordance with the standard set out in paragraph IV. B., above. Dismissal is also required if the petition addresses a problem that is not within the committee's jurisdiction.
- d. If the petitioner has presented an apparently substantial issue within the purview of the committee's responsibility, the committee will hold an evidentiary hearing. At the hearing, which is to be attended by the grievant and the respondent, the faculty member is to present evidence in support of the faculty member's contentions and the person charged with wrongdoing is to be given an opportunity to respond. The committee is to maintain a complete transcript of all evidence received. Only the evidence so compiled is to form the basis for committee conclusions about the case and any resulting advice to the responsible administrator and the chancellor. The burden is on the grievant to establish by a preponderance of the evidence that the faculty member has experienced an injury that would entitle the faculty member to relief in accordance with the standard set out in paragraph IV. B., above.
- e. If, after hearing the matter, the faculty hearing committee determines that an adjustment in favor of the aggrieved faculty member is appropriate, the faculty grievance committee shall so advise the faculty member and the dean, department head, or other respondent administrator. If the relevant administrator does not make the recommended adjustment, or a different adjustment satisfactory to the faculty member, within a reasonable period of time, the faculty grievance committee shall advise the chancellor of its recommendation that an adjustment is appropriate.
- f. If, after reviewing the petition or hearing the matter, the faculty grievance committee determines that no adjustment in favor of the grievant is appropriate, it shall so advise the faculty member and the chancellor.
- g. The chancellor shall base his or her decision on the recommendation of the faculty committee and the record from the faculty grievance committee hearing. The chancellor may, in his or her discretion, consult with the faculty grievance committee before making a decision. The decision of the chancellor is the final administrative decision.
- h. The chancellor shall notify the faculty member and the respondent administrator in writing of the chancellor's decision. The notification shall include a notice of appeal rights, if any, and, if the decision is appealable, it shall contain the information specified in paragraph V.C.ii, below.
- i. The faculty grievance process is a process available to current members of the faculty of a constituent institution. A faculty member whose employment is terminated during the pendency of a grievance proceeding is not entitled to continue to pursue the grievance. If the employment of a faculty member is terminated after the grievance is filed, the chancellor may, however, in the chancellor's discretion, determine that it is in the best interest of the institution to continue the grievance process.

V. Appeal to the Board of Trustees

a. Decisions which may be appealed.

- i. If the faculty grievance committee did not advise that an adjustment in favor of the grievant was appropriate, then the decision of the chancellor is final and may not be appealed.
- ii. If neither the relevant administrative official nor the chancellor makes an adjustment that is advised by the faculty grievance committee in favor of the aggrieved faculty member, then the faculty member may appeal to the board of trustees of the constituent institution. The decision of the board of trustees is final.

b. The board of trustees may delegate to a designated committee the authority to make procedural decisions and to make final decisions on behalf of the board concerning appeals of faculty grievances submitted pursuant to section 607 of *The Code*.

c. Timeline for Appeals

- i. A grievant who seeks to appeal the chancellor's disposition of his grievance must file written notice of appeal with the board of trustees, by submitting such notice to the chancellor, with adequate evidence of delivery, within 10 days after the grievant's receipt of the chancellor's decision. The notice shall contain a brief statement of the basis for the appeal. If the board agrees to consider the appeal, it will do so on a schedule established by the chancellor, subject to any instructions received from the board or from a committee of the board which has jurisdiction of the subject matter of the grievance. The board will issue its decision as expeditiously as is practical. If the grievant fails to comply with the schedule established for perfecting and processing the appeal, the board in its discretion may extend the time for compliance or it may dismiss the appeal.
 - ii. If the chancellor's decision is appealable, the chancellor's notice of the disposition of a grievant's case must inform the grievant: (1) of the time limit within which the grievant may file a petition for review by the board of trustees, (2) that a written notice of appeal containing a brief statement of the basis for appeal is required within the ten day period and, (3) that, after notice of appeal is received in a timely manner, a detailed schedule for the submission of relevant documents will be established. All such notices of decision are to be conveyed to the grievant by a method which produces adequate evidence of delivery.
 - iii. To insure full understanding by the faculty, the appropriate informational document regularly published by the institution (e.g., the faculty handbook), shall include a statement of the time limits established by the Board of Governors or Board of Trustees policy.
- d. **Standard of Review:** Unless a board of trustees provides by policy for a broader scope of review, in order to prevail before the board of trustees, the faculty member must demonstrate that the chancellor's decision was clearly erroneous, that it violated applicable federal or state law or university policies or regulations, or that the process used in deciding the grievance was materially flawed.

VI. Regulations and Guidelines

The President may promulgate appropriate regulations or guidelines to implement this policy.

Effective Date: This policy shall apply to all faculty grievances submitted on or after January 1, 2004.

Appendix for Policy 101.3.2**Process for Faculty Grievances**