

UNC CHARLOTTE FACULTY GRIEVANCE COMMITTEE
GRIEVANCE HEARING PROCEDURES
Effective August 8, 2024

These procedures are recommended best practices intended to assist the Grievance Committee in the disposition of faculty grievances filed pursuant to UNC Charlotte's *Procedures for Resolving Faculty Grievances Arising from Section 607(3) of The Code* (hereinafter, "Grievance Procedures") located at <https://provost.charlotte.edu/policies-procedures/academic-policies-and-procedures/procedures-resolving-faculty-grievances-arising/>.

The Grievance Committee (hereinafter "Committee") is a public body under North Carolina law, and its meetings must therefore be open to the public, as set forth in UNC Charlotte [University Policy 605.7, "Open Meetings Requirements."](#) However, any meeting of the Committee that involves confidential or privileged information, including personnel records or hearing or investigating a complaint, charge, or grievance by or against a public officer or employee, must be conducted in closed session. Hearings shall be called to order in open session, and a proper motion to go into closed session must be made prior to any discussion of confidential or privileged information (see Appendix A). The Committee must make a motion to go back into open session prior to adjourning a hearing.

The Committee is authorized to hear and advise the Chancellor with respect to grievances directly related to a Petitioner's terms and conditions of employment, and which must be based upon a decision made by an administrator in a supervisory role over the Petitioner. The grievance must allege that the decision was in violation of federal or state law, UNC System Policy or Regulation, or UNC Charlotte policy or regulation and that the Petitioner was negatively affected by such decision. If the Committee finds that a violation has occurred, it may also recommend an adjustment to remedy the injury. If the grievance is against the Chancellor, the Committee shall give its advice to the Board of Trustees.

1. Purposes of the Hearing

Grievance hearings serve several important purposes. The primary purpose of the hearing is to give the faculty member (hereinafter "Petitioner") the opportunity to prove their contention that a decision made by an administrator in a supervisory role over the faculty member was in violation of federal or state law, UNC Policy or Regulation, or UNC Charlotte policy, and that the Petitioner was negatively affected by such decision. Grievances do not include matters that are subject to the jurisdiction of another standing committee of the faculty, or subject to another institutional process as may be required under applicable law (e.g., issues involving illegal discrimination or research misconduct investigations). Conversely, the hearing provides an opportunity for the person or persons against whom the Petitioner brings a grievance (hereinafter "Respondent") to respond to the Petitioner's allegations. Another important purpose of the hearing is to create a record of testimony and documentary evidence for review by the parties and the Board of Trustees, should the Petitioner seek further review of the grievance.

2. The Scope of Review

The scope of review by the Committee in grievances is limited as provided in the [Procedures for Resolving Faculty Grievances Arising from Section 607\(3\) of The Code of The University of North Carolina](#). "Grievances" within the province of the Committee's power shall include matters directly related to the terms and conditions of employment other than those involving decisions about reappointment or non-reappointment, promotion, the conferral of tenure, disciplinary discharge, suspension or demotion, imposition of serious sanctions, termination, or such matters that otherwise do not constitute a grievance under [UNC System Policy 101.3.1.3\[R\]](#).

3. The Burden and Standard of Proof

In a grievance, the *burden of proof* rests with the Petitioner and not with the Respondent. The *standard of proof*--i.e., the degree of proof required--requires the Petitioner to establish by a preponderance of the evidence the allegations in the grievance and that the Petitioner is entitled to relief. The preponderance of evidence standard means that the Petitioner's allegations are more likely true than not true. The Committee determines whether this burden of proof has been met by weighing all of the evidence and the demeanor and credibility of the witnesses, in the light of experience and common sense judgments.

4. Confidentiality

The Grievance Committee and all individuals involved in the resolution of a grievance including Faculty Grievance Advisor and mediator (if engaged) shall treat all documents submitted or created in connection with the process of review of a grievance, and the information contained therein, as confidential personnel information. Such confidential records, information, and verbal information derived from any discussions that are part of the formal review process shall not be disclosed to or discussed with any person except those participating in the review of the grievance as provided in the Grievance Procedures, those persons required or permitted to be consulted in accord with decisions of the Committee, or those persons permitted access to such documents by law.

5. Pre-Hearing Procedures

a. Review by the Grievance Committee

If a grievance is not fully resolved through mediation, then the issues not resolved are reviewed by the Grievance Committee through a hearing.

The Committee must decide whether the Petitioner has alleged facts that, if true, constitute the basis for a grievance. If the Petitioner fails to establish that the underlying issue(s) constitute a grievance under Section 607 of The Code, the Committee must dismiss the grievance. Notice of dismissal shall be provided, in writing, to the Petitioner, the Respondent, and the Chancellor. If the Committee determines that the Petitioner has alleged facts that, if true, constitute the basis for a grievance, the Committee shall hold a hearing, meeting, or series of meetings to collect and review the relevant information and facts.

b. Substitution of Committee members for conflict of interest

A Committee member who holds an appointment in the department of a person directly involved in a grievance, who will testify as a witness at the hearing, or who has any other conflict of interest, bias, or appearance of bias, or who appears to be unable for any reason to assess the evidence fairly, impartially, and without prejudice, is disqualified and shall not participate as a Committee member in the proceedings.

If such Committee member does not recuse themselves from the proceedings, the Petitioner or Respondent may request that the chair of the Committee consider excluding from the proceedings any member of the Committee who they believe has a conflict of interest or bias. Such requests should explain why a conflict of interest or bias is perceived to exist. When a request to exclude a Committee member is received, the Committee chair should speak with that member before a decision whether or not to exclude is made. If the disqualified member is the Committee chair, the remaining Committee members shall elect one of the members to serve as acting Committee chair while these conditions exist. The Committee shall also select one of its members with permanent tenure to replace the chair if the chair is incapacitated or absent.

If the Grievance Committee should have fewer than four qualified members because of conflicts of interest, bias, incapacity, or temporary vacancy, elections shall be held promptly in accordance with Sections VI.B and VI.D of the Grievance Procedures to staff the Grievance Committee while these conditions exist. If the need arises during the summer terms, the President of the Faculty, in consultation with the Faculty Executive

Committee, may make temporary appointments to fill vacancies on the Grievance Committee. If a permanent vacancy occurs, elections shall also be held promptly in accordance with Sections VI.B and VI.D of the Grievance Procedures to fill the vacancy for the unexpired term.

c. Witnesses and exhibits

In the spirit of avoiding unfair surprise, and to facilitate the hearing process, at least two days before each party's presentation, the Petitioner and/or the Respondent will provide to the other party and to the Committee chair a list of witnesses and copies of exhibits they intend to introduce at the hearing. With assistance from the Faculty Governance support staff, the Committee chair will provide copies of all exhibits for each Committee member. The failure to list a witness, or to provide advance copies of all exhibits, will not preclude a party from calling the witness or from introducing a document. However, the opposing party may be granted a temporary adjournment of the hearing if the Committee deems a delay necessary in order for that party to respond adequately to the new evidence. It is important to note that the Committee has no authority to compel the attendance of witnesses. However, the Committee chair may request the assistance of the Chancellor to obtain the attendance of witnesses affiliated with the University.

d. Arrangements for court reporter and transcript

The Committee chair will arrange for the hiring and payment of a court reporter through the Office of Legal Affairs. The court reporter will be present and will make a verbatim record of the hearing. At the hearing, the Committee chair should instruct the court reporter to collect and mark all documents submitted by both parties and include them as exhibits with the transcript. The documents should be forwarded to the Office of Legal Affairs at the conclusion of the proceedings. Any party desiring a transcript may obtain one from the Office of Legal Affairs at their own cost.

6. The Hearing

a. Attendance

1. The hearing shall be conducted informally and in private with only the eligible members of the Grievance Committee, the Grievance Committee's legal counsel, the Petitioner and Respondent, and such witnesses as may be called in attendance, except that each person directly involved in the grievance may be accompanied by one person of their choosing to serve as an advisor.
2. Both the Petitioner and Respondent may elect to bring an attorney to serve as such an advisor.
3. The advisor(s) shall not present evidence or make any arguments at the hearing.

At the hearing, the Petitioner may present evidence in support of the Petitioner's contentions, and the Respondent will have an opportunity to respond.

b. Quorum and Control

A quorum for the hearing will consist of a minimum of four eligible members of the Grievance Committee.

The Chair of the hearing has responsibility for keeping a complete transcript of the testimony and preserving all documents that are accepted by the Grievance Committee at the hearing as evidence. Only the evidence presented and accepted into the record by the Committee may be considered by the Committee and may form the basis for Committee conclusions about the case and any resulting advice to the Respondent and the

Chancellor. All witnesses may be questioned by the Grievance Committee members and by the persons directly involved in the grievance.

Except as herein provided, the conduct of the hearing is under the control of the Chair of the hearing.

c. Call to order

The chair of the Committee will call the hearing to order in open session, determine whether a quorum of eligible Committee members is present, introduce the members of the Committee, introduce the Petitioner and Respondent and the individual each has selected to assist them at the hearing (if any), and explain these Hearing Procedures.

The chair of the Committee shall admonish all witnesses that the proceedings are confidential.

The Committee shall then go into closed session by making a proper motion (see Appendix A), specifically identifying the legal basis for meeting in closed session, either:

- to discuss personnel matters under Article 7 of Chapter 126 of the North Carolina General Statutes (“The Privacy of State Employees Personnel Records Act”); and/or
- to hear or investigate a complaint, charge, or grievance by or against a public officer or employee.

d. Opening remarks

Starting with the Petitioner, each party will be given the opportunity to make uninterrupted opening remarks limited to five minutes each. The purpose of opening remarks is to orient the Committee to the nature of the case and to the facts the party intends to establish. Opening remarks are not evidence. Therefore, there will be no questioning by either party or by the Committee following the opening remarks.

The Petitioner shall set forth their contention in the following format:

“I assert that I am entitled to relief in the form of _____ because the following actions or decisions of _____ were in violation of federal or state law, UNC System Policy or Regulation, or UNC Charlotte policy or regulation, and that I was negatively affected by such decision(s).”

e. Presentation of Petitioner’s case

At the conclusion of opening remarks, the Petitioner will present uninterrupted evidence (witnesses, documents, their own testimony, etc.) in support of their allegations.

Other than objections to questions, all witnesses shall be questioned first by the Petitioner on an uninterrupted basis, then by the Committee, and finally by the Respondent.

Questions by the Respondent shall be limited to questions within the scope of the evidence presented by the Petitioner and not for the purpose of presenting the Respondent’s rebuttal.

The Committee expects that the Petitioner normally will present the case within three hours, although the Committee may grant additional time in its discretion. The Petitioner may reserve a portion of the three-hour presentation time and use it for rebuttal time at the conclusion of the Respondent’s evidence. If the Petitioner wishes to reserve rebuttal time, the Petitioner must notify the Committee of that fact at the beginning of the hearing.

f. Respondent’s case

After the Petitioner concludes their presentation, Committee shall adjourn for no fewer than five and no greater than ten calendar days to allow the Respondent to prepare a rebuttal. The chair of the Committee shall

notify the Petitioner and Respondent in writing of the date and time of the continuation of the hearing for rebuttal.

When the chair reconvenes the hearing and calls the hearing to order again, the Respondent may present evidence (witnesses, documents, their own testimony, etc.) in support of their rebuttal. The order of questions and limitation on interruptions shall be the same as for the Petitioner's case. The Committee expects that the Respondent will present their case within three hours, although the Committee may grant additional time in its discretion.

g. Petitioner's case in rebuttal

If the Petitioner has reserved rebuttal time as provided in Section 6.f above, at the close of the Respondent's case the Petitioner may submit evidence limited to rebuttal of the Respondent's evidence.

h. Closing remarks

At the conclusion of the Respondent's and Petitioner's rebuttals, if any, the Petitioner may make closing remarks to the Committee, followed by the closing remarks of the Respondent. Closing remarks shall not exceed fifteen minutes each. Since the Petitioner bears the burden of proof, the Petitioner may also make brief final remarks in response to the Respondent's closing, not to exceed five minutes.

i. Committee deliberations and recommendation

After closing remarks are concluded, the Committee will remain in closed session, excuse all persons present who are not Committee members, and commence deliberations. Deliberations shall not be recorded by the court reporter.

If the Committee wants to see the transcript, the Committee chair will go back into open session, adjourn the hearing, and reconvene the Committee in closed session after the transcript is available. Otherwise, the Committee may begin its deliberations immediately.

The Committee may consider only such evidence as is presented at the hearing and need consider only the evidence offered that it considers fair and reliable. The burden is on the Petitioner to satisfy the Committee that their contention is true by a preponderance of the evidence. The Committee must make a motion to go back into open session prior to adjourning the hearing. The Committee's recommendation will be by majority vote.

After receiving the evidence, the Committee shall prepare a written report of its findings, which shall be provided to the Petitioner, the Respondent, and the Chancellor. The written report shall indicate whether the Petitioner has met their burden of proof, and what, if any, relief is recommended.

If the Committee determines by a preponderance of the evidence that a violation of federal or state law, UNC Policy or Regulation, or UNC Charlotte policy has occurred, the Grievance Committee shall so advise the Chancellor in its written report.

If the Grievance Committee recommends that an adjustment in favor of the Petitioner is appropriate, the Grievance Committee shall so advise the Chancellor. If the Grievance Committee determines that there is no violation of federal or state law, UNC Policy or Regulation, or UNC Charlotte policy, or otherwise that the Petitioner has no remediable injury, it shall so advise the Chancellor in its written report. In the unlikely event that the Grievance Committee finds a violation but no remediable injury on behalf of the Petitioner, the Grievance Committee may recommend corrective action to address the violation to the Chancellor for further consideration.

APPENDIX A

MOTION TO GO INTO CLOSED SESSION

I move that we go into closed session to:

(Specify one or more of the following permitted reasons for closed sessions)

_____ Prevent the disclosure of privileged information under Article 7 of Chapter 126 of the North Carolina General Statutes (“The Privacy of State Employees Personnel Records Act”).

_____ Hear or investigate a complaint, charge, or grievance by or against a public officer or employee.

[N.C.G.S. 143-318.11(a)(6)]