**GRIEVANCE (SECTION 607) CHECKLIST**

This checklist is designed to provide guidance to the Chair of the Grievance Panel and other Panel members for a Grievance (Section 607 of the UNC Code). The checklist is intended as a helpful guide; the Panel Chair should review and consult NCSU POL 05.25.01 (Faculty Grievance and Non-Reappointment Review Policy) and NCSU REG 05.25.04 (Faculty Grievance and Non-Reappointment Review Procedures) for official requirements.

Once the Grievance Panel is finalized and has been contacted by the Faculty Grievance/Review Committee Chair (who will also provide the Panel Chair with a copy of the Grievance), the Panel Chair will contact the other Panel members to schedule the Initial Meeting.

**Initial Meeting of Grievance Panel**

\_\_\_\_ The Chair of the Grievance Panel (“Chair”) conducts the Initial Meeting of the Grievance Panel (may be in person or via conference call). Minutes from the meeting should be kept, noting the date of the meeting, the meeting participants, and generally what was discussed.

\_\_\_\_The Chair shall remind all members of the Panel that the grievance process is confidential.

\_\_\_\_The Chair shall remind all members of the Panel that no *ex parte* communications with the parties or with other Panel members outside of the process shall take place.

*\_\_\_\_* Legal counsel for the Grievance Panel should be consulted regarding any procedural issues or questions involving standards for determining jurisdiction. (It is strongly recommended that legal counsel for the Panel attend or participate via conference call in the initial Panel meeting.)

\_\_\_\_ The Panel reviews the grievance to determine if the grievance was:

(1) timely filed—see POL 05.25.1-Section 4.3; and (2) if the grievance has stated proper grounds under Section 607 of the UNC Code and NC State POL 05.25.1—see Section 4.1 and 4.2.

\*General Section 607 Grievances:

Ask the following questions to determine if the grievance is filed against a proper party and presents a grievable issue:

* Is the grievance filed against an administrator?
* Does the grievance challenge a decision made by the administrator that has adversely affected the faculty member’s professional or academic capacity?
* Does the grievance allege either that the administrator’s decision violated a university policy, regulation or rule and/or that the decision was otherwise unlawful and/or violated commonly shared understandings within the academic community about rights involving university employment?

\*Post-Tenure Review Grievances

Ask the following questions to determine if the grievance is filed against a proper party and presents a grievable issue:

* Was the Post-Tenure review decision one of an overall “does not meet expectations”?
* Was the decision based on one or more of the following:

+ The procedures followed to reach the decision deviated materially from prescribed procedures such that doubt is cast on the integrity of the PTR decision?

+ A violation of a faculty member’s rights guaranteed by the First Amendment to the U.S. Constitution or Article I of the North Carolina Constitution?

+ Discrimination based on a faculty member’s age (40 or older), color, disability, gender identity, genetic information, national origin, race, religion, sex (including pregnancy), sexual orientation, or veteran status? or

+ Personal malice meaning dislike, animosity, ill-will or hatred based on personal characteristics not relevant to valid university decision-making?

\_\_\_\_ If there is no jurisdiction over the grievance, the Panel Chair shall compile the record and submit a report to the Chancellor and to the Faculty Grievance/Review Chair recommending dismissal of the grievance (copies of report go to the parties and to the Faculty Grievance/Review Chair). [Disregard remainder of this checklist; use official record checklist for compilation of the record and Grievance Report template to write report.]

\_\_\_\_If there is jurisdiction over all or part of the grievance, the Panel Chair will notify the parties *in writing* (memo or letter form is preferred over an informal e-mail) of the jurisdictional decision, provide a copy of the grievance to the respondent(s) and notify the respondent(s) to file a written response to the grievance with the Chair within ten (10) calendar days of respondent’s receipt of the decision on jurisdiction.

\_\_\_\_ The Panel Chair should consult with the parties (grievant and respondent(s)) to finalize an agreeable date and time for the pre-hearing meeting

\_\_\_\_After time and date of pre-hearing meeting is confirmed, the Panel Chair should notify the parties of the time, date and location of the pre-hearing meeting.

**Pre-Hearing Meeting**

\_\_\_\_The Panel Chair shall confirm with each party whether he/she will be having an observer at the hearing, obtain the name of the observer (if applicable) and have the party indicate whether the observer is an attorney

\_\_\_\_The Panel Chair shall identify a number of potential hearing dates and times for which all Grievance Panel members and parties are available for the hearing (The identified dates should encompass several days.)

\_\_\_\_The Panel Chair shall instruct the parties to exchange one copy of the proposed exhibits (with a copy to the Chair) at least five (5) calendar days prior to the first date set aside for the hearing. Proposed exhibits may be either in hard copy or in another format agreeable to the parties and the Panel Chair (i.e. pdf version sent over e-mail, thumb drive, CD-Rom, etc.) Proposed exhibits should also be numbered sequentially and identified by party (i.e. “Grievant Exh. 1” or “Respondent Exh. 1”). In addition, the pages of each exhibit should be numbered for easy reference.

\_\_\_\_The Panel Chair should inform the parties that it is their responsibility to secure the availability of each party’s respective witnesses for the hearing

\_\_\_\_The Panel Chair shall ask the parties whether there are any factual or other items that can be agreed upon and reduced to written stipulations signed by the parties

\_\_\_\_ The Panel Chair shall instruct the parties to bring five (5) hard copies of all documents to be introduced at the hearing *(at least 1 copy for opposing party, 1 copy for Official Record, 3 copies for the Panel Members).*

\_\_\_\_The Panel Chair shall address any procedural issues at the pre-hearing meeting (i.e. limitations on number of witnesses, time limitations to present case, order of presentation of evidence, etc.)

\_\_\_\_The Panel Chair shall notify the Faculty Senate Office *(will arrange for hearing room)* and the Office of General Counsel (OGC) of hearing date(s) *(OGC will arrange for Court Reporter)*

**Procedure for the Hearing**

General Considerations

\_\_\_\_Other than during the Grievance Hearing itself, Panel members shall not communicate with the parties or prospective witnesses, directly or indirectly, orally or in writing, concerning the merits or substance of the subject case.

\_\_\_\_\_The Chair shall have authority over the Grievance Hearing – *(including but not limited to considering or admitting oral or written evidence, the relevance of particular testimony, immateriality, or unduly repetitious information or evidence) –* the Chair may consult with the Counsel to the Panel on procedural issues or questions regarding the process. Only such evidence as the Chair believes is fair and reliable shall be considered.

\_\_\_\_\_ All documentary evidence must be marked and made part of the Official Record. Evidence excluded from consideration shall be marked as such, maintained and included in the Official Record in a separate section.

\_\_\_\_Unless a party to the proceedings, witnesses shall be sequestered and kept from the Hearing Room until called to testify.

Actual Hearing:

\_\_\_\_ Hearings shall begin with Panel Chair reading a brief summary of the grievance and the respondent’s response

\_\_\_\_ A “General” section 607 grievance must be based on an administrator’s decision that adversely affected the faculty member in a professional or academic capacity and violates a law, university policy, regulation or rule, or commonly shared understandings about the rights, privileges and responsibilities attending university employment.

\_\_\_\_A “Post Tenure Review (PTR)” grievance must be based on a PTR decision of and overall “does not meet expectations” based on a) procedures that materially deviated from prescribed procedures such that doubt is cast on the integrity of the PTR decision; b) the exercise of rights under First Amendment or Article I, section 19 of the NC Constitution; c) the faculty member’s age (40 or older), color, disability, gender identity, genetic information, national origin, race, religion, sex (including pregnancy), sexual orientation, or veteran status or other discriminatory bases prohibited under UNC or BOT policies; or d) personal malice. ‘Personal Malice’ means dislike, animosity, ill-will, or hatred based upon personal characteristics, traits, or circumstances of an individual. See Section 101.3.1 II.B of the UNC Policy Manual for details.

\_\_\_\_Both parties are entitled to make an opening statement. The Chair may set a time limit for opening statements by the parties. The grievant shall make an opening statement first followed by the respondent(s)’ opening statement.

\_\_\_\_ The grievant has the burden of proving his/her contentions by a preponderance of the evidence presented (more likely than not). The faculty member shall begin, and present his/her contentions which shall be limited to those grounds specified in the Grievance and supported by such proof or evidence as he/she shall provide. If the grievant chooses to testify or speak on his/her behalf, respondent(s) may cross-examine the grievant. If witness testimony is offered, the respondent(s) may cross examine the grievant’s witnesses. ***The Panel may also pose questions directly to witnesses and the parties.***

\_\_\_\_ Following the grievant’s presentation of evidence, the Grievance Panel shall excuse all others present and shall consider whether the grievant has established a prima facie case.

\_\_\_\_If the grievant has not met his/her burden, then the Grievance Panel shall notify the parties and terminate the proceedings (such a determination would result in a dismissal of the grievance). The Panel Chair shall compile the Official Record and submit a report to the Chancellor recommending dismissal of the grievance (copies of report go to the parties and to the Faculty Grievance/Review Committee Chair). [Disregard remainder of this checklist; use checklist for compilation of record and template report form.]

\_\_\_\_If the grievant has met his/her burden, the hearing shall proceed with the presentation of the respondent(s)’ rebuttal or explanation.

\_\_\_\_ The respondent(s) shall present testimony and evidence as is relevant to rebut or address the grievant’s allegations. If the respondent(s) choose to testify, the grievant may cross-examine the respondents. The grievant may then cross examine the respondent’s witnesses. Redirect may be conducted; rebuttal and sur-rebuttal are also permitted. ***The Panel may also pose questions directly to witnesses and the parties.***

\_\_\_\_ Both parties are entitled to closing statements. The Chair may set a time limit. The grievant shall make a closing statement first following by the respondent(s)’ closing statement.

**Closed Session**

\_\_\_\_\_ At the conclusion of the Grievance Hearing, the Panel Chair shall dismiss all others present and the Grievance Panel shall meet in Closed Session to deliberate to reach their determination.

\_\_\_\_ The Grievance Panel must decide whether the grievant met the burden of proof based solely on the evidence presented at the hearing.

\_\_\_\_ The Grievance Panel shall make findings of fact on the allegations presented in the grievance and the responses thereto and make recommended conclusions on whether the grievant has proven the allegations in the grievance by the preponderance of the evidence. If the Grievance Panel finds the grievant has met his/her burden, the Grievance Panel may recommend an adjustment by the appropriate administrator.

\_\_\_\_Within fourteen (14) calendar days after receipt of the transcript from the court reporter, the Panel Chair shall provide the Official Record and the Panel’s Report to the Chancellor. The parties and the Faculty Grievance/Review Committee Chair are also provided with a copy of the Panel Report.