



THE UNIVERSITY
of NORTH CAROLINA
at CHAPEL HILL

CAROL L. FOLT
Chancellor

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February 26, 2018

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

PERSONAL AND CONFIDENTIAL

Professor Jay Smith
Department of History
564 Hamilton Hall, Campus Box 3195
Chapel Hill, North Carolina 27599

Re: Report and Recommendation of the Faculty Grievance Committee

Dear Professor Smith:

I have carefully reviewed the Faculty Grievance Committee's Report on the amended grievance you filed on August 23, 2017. I provide this decision at the request of Christopher McLaughlin, Chair of the Faculty Grievance Committee ("Committee"), who on December 4, 2017, forwarded to me a copy of the response from Robert A. Blouin, PharmD, Executive Vice Chancellor and Provost, declining to accept the recommendations of the Committee ("Provost Response"). In accordance with the Committee's procedures, this matter is now before me for review and response.

Based on my review of the evidence in the record from the hearing and the Report of the Committee, and as discussed further below, I concur with the Provost's Response. The primary remedy sought, beginning with your original grievance, was to be allowed to teach History 383, which you are doing this semester. That decision, to put HIS 383 on the schedule for the Spring 2018 semester, was already in place when you filed your amended grievance. Accordingly, I agree with Provost Blouin that your grievance is now moot and no adjustment is necessary.

In proceeding to hearing, the Committee acknowledged the University had already provided the primary relief sought in your grievance (HIS 383 being placed on the Spring 2018 semester schedule), but had concerns that that relief did not go far enough to ensure that University policies and guidelines would not be violated with respect to future

scheduling of HIS 383¹. I believe that such a proposed *future* remedy is beyond the purview of this Committee and this process, for the reason that it deals with a hypothetical rather than actual controversy. See Section 101.3.2 of the UNC Policy Manual (emphasizing that a faculty member asserting a grievance “must establish that the faculty member experienced a *remedial injury* attributable to the allegation violation...”) (emphasis added). In this case, the Committee’s purported recommended adjustment focuses on a potential, future injury; it does not relate to any actual remedial injury. If, in the future, you believe your rights were infringed and University policies violated, you would have every right to file a new grievance to rectify that situation. To attempt to address that hypothetical situation as part of this current grievance process is unnecessary, premature, and simply not ripe for decision.

The Committee’s review of your grievance focused on whether the scheduling decisions related to HIS 383 being placed on the Spring 2018 schedule conformed to University and departmental policies. While finding no personal bias on the part of any of the Respondents against you, the Committee did conclude that it had concerns about the initial course scheduling, and issued a proposed adjustment which would appear to limit the Dean’s authority and responsibility for overseeing curriculum within his school. The ripeness issue aside, I concur with Provost Blouin’s conclusion that to accept the Committee’s recommendation would be contrary to the University’s institutional standards and would be at odds with the University’s accreditation requirements. In reviewing the evidence, I do not believe that the Dean or departmental leadership violated existing tenets for providing proper administration of curricular and degree programs in the circumstances of this case; rather, I believe the Dean was properly exercising his designated authority in carrying out this important responsibility.

The above notwithstanding, I want to reinforce what I believe is an important underlying issue in this matter: the University’s on-going commitment to the principle of academic freedom in our institution. As evidenced in the Trustee Policies and Regulations Governing Academic Tenure in The University of North Carolina at Chapel Hill, in the Code of the Board of Governors of The University of North Carolina Pertaining to Academic Tenure, and in the Resolution on Academic Freedom adopted by the UNC Faculty Assembly on September 17, 2010, the concept of academic freedom is a fundamental guiding principle in all of our educational pursuits and is alive and well at UNC – Chapel Hill. As provided in Section 1 (Academic Freedom) of the Trustee Policies:

“Academic freedom is the right of a faculty member to be responsibly engaged in efforts to discover, speak and teach the truth. It is the policy of the University to maintain and encourage full freedom, within the law, of inquiry,

¹ Certain additional remedies sought in your amended grievance were agreed, at the outset of the hearing, to be beyond the purview of the Committee, and were not addressed by the Committee.

discourse, teaching, research, and publication and to protect any member of the faculty against influences, from within and without the University, which would restrict the faculty member in the exercise of these freedoms in his or her area of scholarly interest.”

I fully support and embrace the University’s commitment to protect academic freedom for our faculty, in accordance with our policies, our accreditation requirements, and the law. At the same time, I will continue to support the authority of the deans and department leaders to make certain that we are offering courses that meet our strategic goals and our commitment to offer our students a sound education.

For all of these reasons, I concur with the Provost’s decision declining to accept the Report or recommended adjustment of the Committee.

You have the right to appeal my decision to the University Board of Trustees. To do so, please submit your written appeal, containing a brief statement of the basis for appeal, to the Chair of the Board of Trustees through the Office of the Chancellor within fourteen (14) days of the date of this letter. After notice of a valid appeal is received in a timely manner, a detailed schedule for the submission of relevant documents will be established. The decision of the Board of Trustees is final. A copy of the University’s Procedures for Appeals to the Board of Trustees is enclosed.

Sincerely,



Carol L. Folt
Chancellor

Cc: Christopher McLaughlin
Robert A Blouin
James Dean
Kevin Guskiewicz
Jonathan Hartlyn
W. Fitzhugh Brundage

Enclosure

**THE UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL
BOARD OF TRUSTEES**

PROCEDURES FOR APPEALS

ADOPTED NOVEMBER 2015

REVISED JULY 2016

I. INTRODUCTION

This document establishes procedures to be followed where, pursuant to University policy, a party has the right to an appeal to the Board of Trustees (“the Board”). These procedures are supplemental to substantive policies providing the right to appeal, and in the event of any discrepancy between such policies and these procedures, the provisions of the policies shall take precedence. Matters covered by these procedures include the following:

Student Matters

1. Appeals pursuant to the Instrument of Student Judicial Governance (“Instrument”) by students who have been suspended or expelled from the University and who allege a violation of due process or a material deviation from Substantive and Procedural Standards adopted by the Board of Governors.¹
2. Appeals pursuant to section IV.K.2. of the Procedures for Reporting and Responding to Complaints of Discrimination, Harassment, and Related Misconduct Involving a Student as the Responding Party (“Discrimination, Harassment and Related Misconduct Procedures”).

EPA Non-Faculty Employee and Faculty Matters

1. Appeals pursuant to Step Four Review of the University’s EPA Non-Faculty Grievance Procedures.
2. Appeals pursuant to section X. of the Procedures for the Faculty Grievance Committee.
3. Appeals pursuant to section 8 of the Trustee Policies and Regulations Governing Academic Tenure in the University of North Carolina at Chapel Hill (“Tenure Policy”).

Matters Involving Faculty, Staff or Students

1. Appeals regarding ownership of copyrighted works pursuant to the University Copyright Policy

¹ See Chapter 100.1, section 502D of the UNC System Policy Manual (“Section 502D”).

II. PROCESS FOR APPEALS TO THE BOARD

A. Submission of an Appeal

Appeals to the Board shall be submitted in writing to the Chair of the Board through the Office of the Chancellor and shall specify the grounds for the appeal and all supporting facts or documents upon which the Appellant bases the appeal. Except as otherwise provided for by the applicable policy, the appeal petition shall be submitted within ten (10) calendar days of receiving the letter communicating the result of the prior appellate review.

In consultation with the Office of University Counsel, the Chair shall review the appeal petition to determine if it states a valid ground for appeal under the policy or procedures creating the right to appeal. If the Chair determines that the appeal petition does not state a permitted ground, the Chair shall notify the Appellant in writing, the Board shall take no further action on the appeal, and the prior decision shall stand.

If the Chair determines that the appeal petition states a valid ground for appeal, the Chair, or designee, shall notify the Appellant in writing and specify whether any of the grounds alleged by the Appellant have been deemed invalid for appeal. The Chair shall notify the University official responsible for the decision at issue. For purposes of these procedures, the University official responsible for the decision at issue will be deemed an “Appellee” where the policy providing the right to appeal requires that official to respond to the appeal petition or where the Board deems it helpful for that official to do so. In appeals pursuant to the Discrimination, Harassment and Related Misconduct Procedures, the Chair shall notify the other party to the appeal of the decision to allow the appeal to be reviewed by the Board. That person shall also be considered an “Appellee” under these Procedures. The Appellee shall have five (5) calendar days from receipt of the Chair’s decision that the petition states a valid ground for appeal to submit a written response to the Chair. The Appellee’s written response shall address the grounds deemed valid for appeal by the Chair and shall specify all supporting facts or documents on which the Appellee bases the response.

Any time period requirements imposed under this Section II.A. may be extended upon good cause shown through written application to the Chair.

B. Review of an Appeal

Upon determination that an appeal states valid grounds for review by the Board, the Chair will appoint a three (3) person panel of the Board (“the BOT Panel”) to consider the appeal on behalf of the Board. The BOT Panel shall consider the appeal at the BOT Panel’s earliest convenience.

The BOT Panel’s review shall be based upon the record provided to the BOT Panel by the relevant University committee or office, in addition to the appeal petition submitted by the Appellant and any response submitted by the Appellee.

The BOT Panel may determine that in order to decide the specific issue on appeal, it is desirable that the BOT Panel receive personal testimony in addition to the existing record. In such instances, and if allowed by policy, the BOT may request the presence of the party or parties, or of any other

person who can provide testimony relevant to the issues on appeal. Such testimony will be limited to matters relevant to the issue on appeal.

In either circumstance, an individual may appear before the BOT in person, by videoconference, or by phone. A party may be accompanied by legal counsel, who may make a brief opening statement to the BOT Panel in support of the party's position on appeal. Attorneys will not be allowed to question witnesses or the other party. The BOT Panel Chair shall have discretion to control the conduct of the appeal proceedings, including the imposition such deadlines as are necessary and appropriate, and may limit or exclude testimony when deemed redundant or irrelevant.

C. Decision of the Board

The BOT Panel shall issue a recommended decision to the Board, which may be in the form of a written memorandum to the Board or may be communicated orally to the Board by the BOT Panel Chair. The Board shall be provided access to the full record in the matter. If a majority of the Board members present vote to accept the BOT Panel's recommendation, the BOT Panel's recommended decision will be deemed the decision of the Board. If a majority of the Board members present vote against the BOT Panel's recommendation, the Board shall issue an alternate decision.

The Board may reverse the prior decision only if the Appellant can meet the burden of showing that the prior decision is affected by **clear and material error**. If the Appellant is unable to satisfy this burden, the Board shall affirm the prior decision. In the event the Appellant meets the burden of proof, the Board shall proceed as described below.

1. **Appeals Based Upon the Instrument²** – The Board shall decide whether to remand the case for a new Honor System hearing or dismiss the charge if the alleged violation cannot be corrected through remand. In the event the Board decides to remand the case, the Board may provide, as appropriate, guidance regarding the recommended scope of the remand.
2. **Appeals Based Upon the Discrimination, Harassment, and Related Misconduct Procedures** – The Board shall decide whether to remand the case to the Hearing Panel or dismiss the charge if the alleged violation cannot be corrected through remand. In the event the Board decides to remand the case, the Board may provide, as appropriate, guidance regarding the recommended scope of the remand.
3. **Appeals Based Upon the EPA Non-Faculty Grievance Procedures** – The Board shall decide whether to remand the case to the Grievance Committee or recommend other corrective action if the alleged violation cannot be corrected through remand. In the event the Board decides to remand the case, the Board may provide, as appropriate, guidance regarding the recommended scope of the remand.

² Absent a determination to the contrary by the Chair of the Board of Trustees, the Student Body President shall be expected to recuse herself or himself from consideration and determination of any appeal before the Board arising under the Instrument or any appeal under the Discrimination, Harassment, and Related Misconduct Procedures that involves a student.

4. **Appeals Based Upon the Procedures for the Faculty Grievance Committee** – The Board shall decide whether to remand the case to the Grievance Committee or recommend other corrective action if the alleged violation cannot be corrected through remand. In the event the Board decides to remand the case, the Board may provide, as appropriate, guidance regarding the recommended scope of the remand.
5. **Appeals Based Upon the Tenure Policy** – The Board shall decide whether to remand the case to the Hearings Committee or recommend other corrective action if the alleged violation cannot be corrected through remand. In the event the Board decides to remand the case, the Board may provide, as appropriate, guidance regarding the recommended scope of the remand.
6. **Appeals Based Upon the Copyright Policy** – The Board shall remand the matter to the Provost and Vice Chancellor for Research to implement such clarification of copyright ownership as is appropriate to the circumstances.

D. Notification of Decision

The decision of the Board shall be communicated simultaneously to all parties in writing and shall state the Board's findings, its determination, and its rationale. The decision shall also state whether further appeals, if any, are available pursuant to section III., below, or whether the decision is final. The Board shall transmit the decision to all parties by electronic, campus, or first-class mail.

III. FURTHER APPEALS

- A. **Appeals Based Upon the Instrument** – In cases where the sanction imposed was suspension, the Board's decision is final, and no further appeals are available. In cases where the sanction imposed was expulsion, the Appellant may appeal to the Board of Governors consistent with Chapter 100.1, section 502D of the UNC System Policy Manual.
- B. **Appeals Based Upon the Discrimination, Harassment, and Related Misconduct Procedures** – In cases where the sanction imposed was suspension, the BOT Panel's decision is final, and no further appeals are available. In cases where the sanction imposed was expulsion, both the Appellant and the Appellee may appeal to the Board of Governors consistent with Chapter 100.1, section 502D of the UNC System Policy Manual.
- C. **Appeals Based Upon the EPA Non-Faculty Grievance Procedures** – The Board's decision is final, and no further appeals are available.
- D. **Appeals Based Upon the Procedures for the Faculty Grievance Committee** – The Board's decision is final, and no further appeals are available.
- E. **Appeals Based Upon the Tenure Policy** – The Board's decision is final and no further appeals are available except where section 8 of the Tenure Policy specifies that appeals may be made to the Board of Governors.

- F. **Appeals Based Upon the Copyright Policy** – The Board’s decision is final, and no further appeals are available.

IV. REFERENCES

The Instrument of Student Judicial Governance –

<https://studentconduct.unc.edu/sites/studentconduct.unc.edu/files/documents/Instrument.pdf>

Procedures for Reporting and Responding to Complaints of Discrimination, Harassment, and Related Misconduct Involving a Student as the Responding Party –

http://sexualassaultanddiscriminationpolicy.unc.edu/files/2014/08/UNCCH_Procedures_for_Students_as_the_Responding_Party1.pdf

EPA Non-Faculty Grievance Procedures of The University of North Carolina at Chapel Hill –

http://hr.unc.edu/files/2012/11/ccm1_018368.pdf

Procedures for the Faculty Grievance Committee – <http://faccoun.unc.edu/faculty-code-and-policies/procedures-for-the-faculty-grievance-committee/>

Trustee Policies and Regulations Governing Academic Tenure in the University of North Carolina at Chapel Hill – <http://policies.unc.edu/files/2013/04/tenure.pdf>

Chapter 100.1, section 502D of the UNC System Policy Manual –

<http://www.northcarolina.edu/apps/policy/index.php?pg=vs&id=4428&added=1>

The Copyright Policy of the University of North Carolina at Chapel Hill –

<http://policy.sites.unc.edu/files/2013/05/Copyright.pdf>