

THE UNIVERSITY OF NORTH CAROLINA AT ASHEVILLE

FACULTY SENATE

Senate Document Number 0813F

Date of Senate Approval 11/7/13

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Statement of Faculty Senate Action:

**FWDC 6:      Revision to Procedures for Faculty Grievance**  
**([SD4089S](#), [SD4189S](#), [SD0710F](#), Faculty Handbook sections [3.6](#), [14.2](#))**

**Effective date:** Immediately

**Summary:** This document change the requirement that parties to a grievance participate in mediation to a recommendation that they voluntarily undergo mediation in an effort to arrive at reconciliation before a formal inquiry by the Grievance Committee begins.

**Rationale:** In Fall 2010, grievance procedures were modified via [SD0710F](#) in response to changes made to [UNC Policy 101.3.2](#), most significantly by requiring mediation in any grievance procedure in which the Grievance Committee finds in its initial screening that there is a *prima facie* case. However, while this policy mandates (1) that each university must clearly state its policies toward mediation, and (2) that formal grievance procedures must permit the parties to seek mediation. In particular, it does not state that mediation is mandatory. The relevant portions of UNC Policy 101.3.2 are:

*II. 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.*

followed by:

*III. 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.*

II. c. mandates the Grievance Committee to refer the matter for mediation, but only in accordance with the policies of the constituent institution, while III. c. makes it clear that these institutional policies can either require mediation or permit the parties to voluntarily undertake mediation.

It is not appropriate to require mediation in all grievance cases, particularly those involving sexual harassment, threats of violence, or other acts of intimidation. As a result, the grievance

procedures are modified to *permit* parties to voluntarily seek mediation, but not require that they do so.

**Revise 3.6.2-3 as follows:**

### 3.6.2 Initial Screening

Mere receipt of a petition does not establish the need for a full grievance hearing. The first effort of the committee is to "decide whether the facts merit a further investigation". This determination shall be made only by a designated committee member who will secure from the grievant details necessary to explain the petition. Such inquiry shall be made only of the grievant, and findings shall be reported back to the committee simply as allegations. The purpose of this inquiry is to allow members to understand the petition as delivered, to amplify written charges, to remove possible misunderstandings of or ambiguities in the petition, and to ascertain whether at least prima facie the grievant has raised a significant issue.

If it is determined that this is the case, and if mediation has not already been pursued, ~~the grievance will be submitted to mediation.~~ the Chair of the Grievance Committee will ask both parties to the grievance whether they wish to voluntarily submit their grievance to mediation, in accordance with 3.6.3. A decision not to participate in mediation will not be held against either party in any further proceedings.

### 3.6.3 Mediation

~~If both parties choose to attempt mediation, the Chair of the Grievance Committee~~ The chair of the grievance committee will assemble a list of mediators to be agreed upon by both parties. If both parties do not agree on a mediator, the mediation attempt will be terminated. Members of the UNCA faculty or staff, members of the faculty or staff of other campuses within the University, or individuals from outside the University community, may serve as mediators, as long as they have successfully completed either (1) formal mediation training that is substantially equivalent to the training required for certification by the North Carolina Administrative Office of the Courts, or (2) formal mediation training that has been specifically designed for use in a university setting. However, mediators may not be members of the committee that hears grievances.

If there are costs associated with the mediation, they will be shared by the parties to the grievance. Attorneys will not be allowed to participate in the mediation process, except as mediators or non-participatory observers.

No record of the 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, i.e., that mediation was attempted, but settlement was not reached. Mediators may not be called as witnesses in any subsequent proceeding. Nothing that is said or done by any party during a mediation process may be referred to by, or used against, a party in any subsequent proceeding and no blame will attach to either party if the mediation does not produce a resolution.

Any mediation agreement that binds the University must be signed by a University official with the authority to bind the University concerning the particular agreement.

Any time limit concerning the grievance will be suspended for the duration of the mediation process.

If mediation does not result in a satisfactory resolution of the grievance, the Grievance Committee initiates a formal inquiry.

**Revise 14.2, Section VII, part C, as follows:**

C. Faculty Grievance Committee. (amended by [SD0710F](#), [SD4089S](#))

1. Not later than April 15 of each year, the faculty shall elect members to a Faculty Grievance Committee. This committee shall contain at least one faculty member at each professor rank. Only one member may come from any subject-matter department. No officer of administration shall serve on the committee. For purposes of this section, officers of administration shall be deemed to include department ~~chairman~~ chairs and program directors. Members of the Committee of the Tenured Faculty and members of the Faculty Committee on Hearings may not serve on this committee.
2. The committee shall be authorized to hear, mediate, and advise with respect to the adjustment of grievances of members of the faculty. The committee's power shall be solely to hear representations by the persons directly involved in a grievance, to mediate voluntary adjustment by the parties, and to advise adjustment by the administration when appropriate. Advice for adjustment in favor of an aggrieved faculty member may be sent to the Chancellor only after the department ~~chairman~~ or other administrative official most directly empowered to adjust the matter has been given similar advice and has not acted upon it within a reasonable time.
3. "Grievances" within the province of the committee's power shall include matters directly related to a faculty member's employment status and institutional relationships within this institution. However, no grievance that grows out of or involves matters related to a formal proceeding for the suspension, discharge, or termination of a faculty member, or that is within the jurisdiction of another standing faculty committee, may be considered by the committee.
4. Parties to a grievance ~~must first~~ may participate in mediation in accordance with institutional policies as noted in Section 3.6.3 of the *UNC Asheville Faculty Handbook*. If the parties have not participated in mediation prior to the filing of the petition, ~~the committee will refer them to a mediator.~~ the Chair of the Grievance Committee will ask the parties if they wish to voluntarily participate in mediation, but there is no obligation to do so; a decision not to participate in mediation will not be held against either party in any further proceedings.
5. The Grievance Committee shall organize itself within one week of the Fall Faculty meeting. The Chair of the Faculty Welfare and Development Committee shall call the initial meeting and preside over the election of a Chair and Secretary. After this meeting, the Secretary of the Senate will report the results of the election to the faculty.