

Faculty Handbook (FH) Changes for Legal and Policy Compliance
Approved by
Appalachian State University Board of Trustees
June 27, 2014

The Office of General Counsel recently provided the Office of Academic Affairs (AA) with guidance on FH sections that do not contain the current applicable policy.

The publication of outdated and inaccurate information about policies applicable to faculty members may create confusion for those looking to the FH for important and current information relating to their rights and obligations at Appalachian State. It also creates an unnecessary legal risk to the University, including possible claims that inaccurate FH language should apply rather than provisions as set forth in documents of superseding legal authority.

For these reasons, prompt action was needed on the following items. Other items of lesser concern will wait for discussion and action during the next academic year.

For each of the items, a brief explanation regarding the need for revision is provided along with the proposed revision.

Please also review [Faculty Handbook Revisions for 2014](#) (web link).

Equal Employment Opportunity, Non-Discrimination, and Protected Classes – State and Federal Law

Explanation: On April 2, AA was informed by General Counsel Dayton Cole that the North Carolina General Assembly has passed legislation that revised the list of “protected classes” to eliminate “creed” for purposes of non-discrimination and Equal Employment Opportunity. The reference can be found at <http://www.ncleg.net/Sessions/2013/Bills/House/PDF/H834v6.pdf> (see Section 7.1, amending N.C.G.S. § 126-16).

The General Counsel recommended an update of all policies and documents that refer to “creed” in this context. In accordance with the new legislation, “creed” will be eliminated from the FH in the Equal Opportunity Policy at the beginning of the FH and in sections 3.1, 4.4.2 and 4.6.1 to be consistent with recent revision of the university’s institution-wide Policy Manual 602.1.

In addressing this recent change based on North Carolina law, the Office of General Counsel identified another correction to be made in the Equal Opportunity Policy as printed in the FH – namely, inclusion of “genetic information” as a category of protected information. This change is mandated by the federal Genetic Information Nondiscrimination Act (GINA). The inclusion of “genetic information” in the list of protected categories is already reflected in the university’s official statement of Equal Opportunity Policy (Policy 602.1).

Equal Opportunity Policy

Appalachian State University is committed to providing equal opportunity in education and employment to all applicants, students, and employees. The University does not discriminate in access to its educational programs and activities, or with respect to hiring or the terms and conditions of employment, on the basis of race, color, national origin, religion, **ereed**, sex, gender identity and expression, political affiliation, age, disability, veteran status, **genetic information** or sexual orientation. The University actively promotes diversity among students and employees.

3.1 Equality of Opportunity

Appalachian State University is committed to providing equal opportunity in education and employment to all applicants, students, and employees. The University does not discriminate in access to its educational programs and activities, or with respect to hiring or the terms and conditions of employment, on the basis of race, color, national origin, religion, **ereed**, sex, gender identity and expression, political affiliation, age, disability, veteran status, **genetic information** or sexual orientation. The University actively promotes diversity among students and employees.

4.4 Reappointment, Promotion, and Tenure

4.4.1 See The University of North Carolina Policy Manual, section 400.3.1.1 concerning required discussions relating to the primacy of teaching.

4.4.2 The decision to reappoint, promote or tenure a faculty member may be based on any factor(s) considered relevant to the total institutional interests, but those responsible for making the decision must consider the faculty member's demonstrated professional competence, potential for future contribution, and institutional needs and resources. A decision not to reappoint, promote or tenure may not be based upon (1) the faculty member's exercise of rights guaranteed by either the First Amendment to the United States Constitution or Article I of the North Carolina Constitution; (2) unlawful discrimination based upon the faculty member's race, color, national origin, religion, **ereed**, sex, gender identity and expression, political affiliation, age, disability, veteran status, **genetic information** or sexual orientation; or (3) personal malice. For purposes of this section, the term "personal malice" means dislike, animosity, ill will, or hatred based on personal characteristics, traits or circumstances of an individual that are not relevant to valid University decision making. See UNC Policy 101.3.1 II.B. for details.

4.6.1 Permissible and Impermissible Grounds for Non-Reappointment

The decision whether to reappoint a faculty member when a probationary term of appointment expires may be based on any factor considered relevant to the total institutional interests, but those responsible for making the decision must consider the faculty member's demonstrated professional competence, potential for future contribution, and institutional needs and resources. A decision not to reappoint may not be based upon (1) the faculty member's exercise of rights guaranteed by either the First Amendment to the United States Constitution or Article I of the North Carolina Constitution, (2) unlawful discrimination based upon the faculty member's race, color, national origin, religion, **ereed**, sex, gender identity and expression, political affiliation,

age, disability, veteran status, [genetic information](#) or sexual orientation; or (3) personal malice. For purposes of this section, the term “personal malice” means dislike, animosity, ill will, or hatred based on personal characteristics, traits or circumstances of an individual that are not relevant to valid University decision making. See UNC Policy 101.3.1 II.B. for details.

Item 2: Appeal Beyond the Chancellor

4.11.1 Appeal Beyond the Chancellor

Explanation: The current language in this section is inconsistent with the Bylaws of the Board of Trustees of Appalachian State University (official version on Board of Trustees web site and in ASU Policy Manual 103.1). The FH indicates that the decision of the BOT Appeals Committee is final; Bylaws section 3.8, however, indicates that the BOT Appeals Committee makes a *recommendation* to the full Board.

Some language in FH 4.11.4.1(a) that does not appear in the Bylaws (e.g., “that immediate past chair of the Faculty Senate may advise the current chair [regarding appointments to BOT Appeals Committee] if the chair feels that it is necessary.”) supplements rather than conflicts with the language in the BOT bylaws and can remain.

If the Faculty Senate wishes to recommend modifications of the deadline, we can discuss that during the next academic year.

4.11.4 Appeal Beyond the Chancellor

4.11.4.1 With respect to a decision adverse to the faculty member in a 607 grievance about a matter other than a promotion, tenure, or non-reappointment decision, the line of appeal is as prescribed by Section 607 of The Code, and shall be guided by the following procedure:

(a) A grievant dissatisfied with the chancellor’s disposition of a grievance must file written notice of appeal with the Board of Trustees, by submitting such notice to the chancellor, within ten (10) working days after the grievant’s receipt of the decision by certified mail, return receipt requested. The appeal to the Board of Trustees shall be to a standing committee of five (5) members to be selected and agreed upon by the chair of the Board of Trustees and the chair of the Faculty Senate. The immediate past chair of the Faculty Senate may advise the current chair if the chair feels that it is necessary. The appeal shall be transmitted through the chancellor and be addressed to the chair of the Board of Trustees. The Board of Trustees Appeals Committee shall base its consideration of the appeal upon the written record of the grievance. The Board of Trustees Appeals Committee will [make a recommendation to the Board of Trustees](#) within one hundred twenty (120) calendar days after receipt by the chancellor of the notice of appeal. The decision of the Board of Trustees is final.

Item 3: Conflict of Interest and Commitment

5.3 Conflict of Interest and Commitment

Explanation: The official University Policy on Conflict of Interest and Commitment appears as Policy 604.6 in the Policy Manual. Section 5.3 of the FH is out of date and does not reflect significant changes approved by the chancellor in November 2012. Additional (non-substantive) changes to this policy were recently approved by the Cabinet with an effective date of July 1, 2014, consistent with implementation of the new on-line disclosure process. Because FH section 5.3 contains inaccuracies that are significant in number and in substance, and because the format of the policy as adopted is dramatically different than the format used in the FH, Academic Affairs recommends providing a citation and link to Policy 604.6 in lieu of the current FH section.

If the Faculty Senate wishes to recommend that Policy 604.6 be reformatted and included in its entirety in the FH, we can discuss that during the next academic year.

5.3 Conflict of Interest and Commitment

Deleted 5.3.1 - 5.3.13.8

The University's Policy on Conflict of Interest and Commitment is set forth in ASU Policy Manual 604.6

http://policy.appstate.edu/Conflict_of_Interest_and_Commitment

Item 4: Political Activity of University Employees

5.5 Political Activity of University Employees

Explanation: This section addresses a number of issues related to political activity of employees, including holding public office, candidacy for elective public office, employee engagement in political campaign activities, leaves of absence for appointive office, and endorsement of candidates for political office by senior administrators. All of these provisions are now addressed in The UNC Policy Manual 300.5.1 and 300.5.2 (amendments effective April 11, 2014), and the FH language is now outdated in significant respects. Academic Affairs recommends providing a citation and link to UNC Policy Manual 300.5.1 and 300.5.2 in lieu of the current FH section.

If the Faculty Senate wishes to review and make recommendations regarding matters related to 300.5.1 and 300.5.2, and/or recommend that 300.5.1 and 300.5.2 be reproduced in their entirety in the FH, we can discuss that during the next academic year.

5.5 Political Activities of Employees

Deleted 5.5 - 5.5.7

The University's policies on political activities are as set forth in The UNC Policy Manual:

300.5.1 Political Activities of Employees

<http://www.northcarolina.edu/apps/policy/index.php?pg=vs&id=331&added=1>

300.5.2 Candidacy for Elective Office; Officeholding (Elective and Appointive Public Office)

<http://www.northcarolina.edu/apps/policy/index.php?pg=vs&id=332&added=1>