3.03 By-laws of the General Faculty of Western Carolina University

These By-laws are written under the provisions of the Constitution of the General Faculty and, where the By-laws are in conflict, the Constitution will govern.

ARTICLE I Procedural questions shall be resolved in accordance with the most recent edition of Robert's Rules of Order

ARTICLE II The Committee on Nominations, Elections, and Committees.
Section 1. Membership and chair

II.1.1 The Committee on Nominations, Elections, and Committees (CONEC) shall consist of nine elected faculty members, each of whom shall have been a member of this faculty a minimum of three full years, and the Chair and Secretary of the Faculty ex officio.

II.1.2 At least one faculty member from each of the Colleges of the university, including the library, shall serve, but no more than one-half the members shall be from any one College. At least one member from each of the academic ranks of Professor, Associate Professor, and Assistant Professor shall serve on the committee. A member's promotion in rank during a term of office shall not terminate membership. Department Heads may serve on the committee.

II.1.3 Each member shall serve a three-year term, the terms staggered so that three members are elected each year.

II.1.4 The Chair shall be elected by and from the membership of the committee and shall serve for two years.

Section 2. Duties and Responsibilities

II.2.1 In addition to the duties specified in the Faculty Constitution (I.7.1 and I 7.2) and in the By-laws of the Faculty Senate (II.2.4.), the committee shall promulgate its own rules of procedure, shall devise appropriate and uniform election procedures, shall provide assistance to the elections committees of the Colleges, and shall maintain a record of all elections for the previous five years.

II.2.2 The committee shall insure that all nominations for elections conducted under its supervision be open. Questions of eligibility for nominations shall be resolved by the committee. Committee decisions may be appealed to the Faculty Senate.

II.2.3 The Chair of the CONEC shall call the first meeting of each committee of the General Faculty for which a chair is to be elected.

ARTICLE III Delegates to the Faculty Assembly of the University of North Carolina

Section 1. Membership and Elections

III.1.1 Nominations and elections shall be held in such a way as to assure that there will be no more than two delegates from any one undergraduate college of the university. Department Heads may serve on the Faculty Assembly Delegation.

III.1.2 Delegates and alternates shall be elected to three-year terms, the terms staggered so that each of the two delegates and each of the two alternates are elected in different years.

III.1.3 Chair of the Faculty Senate shall be an ex-officio delegate to the Faculty Assembly.

Section 2. Duties and Responsibilities

III.2.1 The Faculty Assembly Delegation shall prepare an annual report of the work of the faculty assembly to be presented by the senior-elected delegate to the General Faculty at its first fall meeting.

III.2.2 The senior-elected faculty assembly delegate shall serve as an ex-officio member of the Faculty Senate and of the Senate Planning Team.

III 2.3 The senior-elected faculty assembly delegate shall report matters of interest or concern to the Faculty Senate at its next scheduled meeting after each faculty assembly meeting.

III.2.4 If the senior-elected faculty assembly delegate is unable to perform these duties, the next senior delegate will fulfill them.

ARTICLE IV The Faculty Grievance Committee

Section 1. Membership and chair

IV.1.1 The Faculty Grievance Committee ("Committee") shall consist of nine elected faculty members, each of whom shall have tenure. No officer of administration shall serve on the Committee. For purposes of this section, "offices of administration" shall be deemed to include Department Chairs and Department Heads. Appointment to department headship or to a higher level administrative position during a Committee member's term of service shall force resignation from the Committee.

IV.1.2 At least one faculty member from each of the Colleges of the university shall serve, but no more than one-half the members shall be from any one College. At least one member from each of the academic ranks of professor and associate professor shall serve on the Committee. A member's promotion in rank during a term of office shall not terminate membership.

IV.1.3 Each member shall serve a three-year term, the terms staggered so that three members are elected each year.

IV.1.4 The chair shall be elected by and from the membership of the Committee and shall serve for one year. The chair may be elected to successive terms.

Section 2. Duties and Responsibilities

IV.2.1 The Committee is authorized to hear and advise with respect to the adjustment of grievances of members of the General Faculty. The power of the Committee is solely to hear representations by the persons directly involved in grievances and to advise adjustment by the appropriate administrative official. Advice for adjustment in favor of an aggrieved Faculty member may be given to the Chancellor only after the Provost, Dean, Department Head, or other administrative official most directly empowered to adjust it has been given similar advice and has not acted upon it within a reasonable time.

IV.2.2 Grievances within the province of this Committee include all those matters related to the faculty member's employment status (See Section VI of Tenure Policies and Regulations of Western Carolina University) and intra-university relationships. The Committee shall not consider matters involving formal proceedings for the suspension or dismissal of the faculty member since these matters will be considered by the Faculty Hearing Committee.

Section 3. Principle Procedures

IV.3.1 Preface

Faculty members are encouraged to pursue an informal resolution of any matter that might be the subject of a grievance before utilizing these procedures.

IV.3.2 Scope

IV.3.2.1 In order to prevail in the grievance process, a faculty member must establish that the faculty member experienced a remediable injury attributable to the alleged violation of a right or privilege based on federal or state law, university policies or regulations, or commonly shared understandings within the academic community about the rights, privileges and responsibilities attending university employment. Examples would be if the decision-maker disregarded an established standard for evaluation, relied on impermissible considerations such as race or sex, or failed or refused to consult with or receive information from mandated advisory bodies.

IV.3.2.2 No grievance that grows out of or involves matters related to a formal proceeding for the suspension, discharge or termination of employment of a faculty member, or that is within the jurisdiction of another standing faculty Committee, may be considered by the Committee. An example of such a matter is the denial of tenure when non-reappointment is involved.

IV.3.2.3 The faculty grievance process is a process available to current members of the faculty. A faculty member whose employment is terminated while a grievance proceeding is pending is not entitled to continue to pursue the grievance. If the employment of a faculty member is terminated after the grievance is filed, the Chancellor may, however, at the Chancellor's discretion, determine that it is in the best interest of the institution to continue the grievance process.

IV.3.3 Grievance Policy and Procedure

IV.3.3.1 Initiation of Grievance

IV.3.3.1.1 A faculty member shall institute the grievance procedure by submitting a written grievance to the lowest level academic administrator with authority to correct or pursue adjustment of the situation precipitating the grievance[1]. The grievance must be filed within fifteen (15) working days[2] after the Faculty member becomes aware of the alleged act precipitating the grievance. If no grievance is filed within this period, the Faculty member will have no further right to an internal grievance procedure.

IV.3.3.1.2 The grievance shall be a concise statement setting out the following:

IIV.3.3.1.2.1 the act, actions or omissions complained of, the person(s) who is alleged to have committed the act, pertinent facts of the complaint and the date, time, and place of the occurrence;

IV.3.3.1.2.2 the provision of federal or state laws; the Faculty Handbook, or other university policy or regulation believed to have been violated; or a description of the commonly shared understandings within the academic community about the rights, privileges and responsibilities attending university employment believed to have been violated:

IV.3.3.1.2.3 the names of possible witnesses, if any;

IV.3.3.1.2.4 description of the evidence which supports the faculty member's complaint; and

IV.3.3.1.2.5 the specific corrective action requested by the faculty member.

IV.3.3.2 Review of the Statement of Grievance.

IV.3.3.2.1 The administrator receiving the formal grievance shall immediately notify the Provost and shall immediately send the Provost a copy of the faculty member's grievance.

IV.3.3.2.2 Within ten (10) working days after receipt of the grievance, the administrator shall meet with the faculty member to discuss the matter. The administrator may, with the faculty member's agreement, ask other administrators to attend the meeting.

IV.3.3.2.3 Within ten (10) working days after the meeting with the faculty member, the administrator shall deliver to the faculty member a written response to the grievance. The written response shall notify the faculty member of the faculty member's right to appeal to the

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[1] For the purpose of grievances involving promotions or tenure decisions when reappointment is not involved (**early tenure**), this administrator shall be the Provost.

[2] The term "working days" as used in these policies means any day (**excluding Saturdays and Sundays**) on the undergraduate Academic Calendar that classes are scheduled to be in session during the faculty member's contracted employment term, **not including summer sessions**.

Committee and opportunity to obtain assistance through the faculty member's own efforts and at the faculty member's own expense. Enclosing a copy of these procedures shall be adequate notification of appeal rights.

IV.3.3.3 Appeal to Committee

IV.3.3.3.1 If the faculty member desires to appeal the decision of the respondent administrator, a written statement of appeal shall be delivered by the faculty member to the Chair of the Committee and the Provost within ten (10) working days following the faculty member's receipt of the administrative supervisor's decision. The faculty member shall also deliver a copy of the statement of appeal to the respondent administrator by certified mail. The statement of appeal shall include the original grievance, a written summary of any additional facts or arguments which are said to support the original grievance, and the written response from the respondent administrator. If no appeal is filed within the prescribed period, the employee has no further right to an internal grievance procedure.

IV.3.3.3.2 Committee Initial Procedure

IV.3.3.3.2.1 Members of the Committee may decline to serve in a particular case for personal reasons. Members directly involved in a grievance shall not serve.

IV.3.3.3.2.2 Unless the parties to the grievance have participated in mediation prior to the Faculty member's filing the statement of appeal, before taking any action on the statement of appeal, the Committee shall refer the matter for mediation in accordance with the policies below.

IV.3.3.3.3 Mediation of Grievance

IV.3.3.3.3.1 Mediation is a procedure in which disputing parties enlist the assistance of a neutral party to help them in achieving a voluntary, bilateral agreement that finally and definitively resolves all or portions of their dispute, without resorting to adversarial procedures such as grievance hearings, administrative hearings or litigation. Any such mediated agreement that the parties are able to negotiate will be embodied in a written agreement.

IV.3.3.3.3.2 The appropriate functions of a mediator are to assist the parties in defining, clarifying, communicating about, and ascertaining the substantiality and relevance of the issues that appear to divide the parties and to aid the parties in generating, considering, and communicating with each other about possible bases for resolving the dispute.

IV.3.3.3.3.3 Neither party is obliged to engage in mediation; it is a consensus undertaking. A decision by either party not to pursue mediation or to terminate mediation will not be held against that party. Once begun, mediation may be terminated by either

party or the mediators by filing a simple written notice with the Chair of the Committee. No blame will attach to either party if mediation does not produce an agreement.

IV.3.3.3.3.4 WCU shall maintain a pool of three trained mediators. Two of the mediators shall be elected faculty members, each of whom shall have tenure. They may not be members of the Committee. Each will serve a three-year term and may succeed themselves without limitation. The third mediator will be the Director of Equal Opportunity. Mediators must successfully complete formal mediation training substantively equivalent to that required for certification by the North Carolina Administrative Office of the Courts or have been formally trained in mediation specifically designed for use in a university setting. Training may be subsequent to election/appointment but must precede the mediator's handling of a dispute. Training will be made available through the Office of the Provost.

IV.3.3.3.3.5 The parties will select one mediator from the pool by mutual agreement. Selection should normally occur within ten (10) working days of the Committee's referral. A selected mediator may decline to serve if he/she believes a conflict or other personal reason precludes objective service.

IV.3.3.3.3.6 If a campus mediator is not available to serve in a timely manner, the parties may select, by mutual agreement, a properly trained mediator from another campus within the University system. This selection should normally occur within 15 working days of determining that a campus mediator is not available. If the parties cannot agree upon a mediator, the mediation will be terminated.

IV.3.3.3.3.7 Attorneys may not participate in the mediation process.

IV.3.3.3.3.8 The mediator will schedule and conduct all mediation activities in a timely fashion.

IV.3.3.3.3.9 Any mediated agreement shall be in writing and shall be signed by the grieving party and the university official with the authority to bind the university to the particular agreement. Copies shall be provided to the parties and the original shall be kept by the provost. The mediator will send an unelaborated written statement, signed by the parties, to the Committee informing it that the matter has been resolved.

IV.3.3.3.3.10 The only record to be produced in the event of a failed mediation is an unelaborated written statement from the mediator to the Committee informing the Committee that mediation has terminated without an agreement.

IV.3.3.3.3.11 As a condition of participating in the mediation process, both parties must agree in writing that; 1. the mediator cannot be called as a witness in any subsequent proceeding involving the matter being grieved and 2. nothing done or said by either party during a mediation process may be referred to or otherwise used against a party in any subsequent proceeding.

IV.3.3.3.3.12 Any time limit existing within this grievance policy or adopted by the Board of Governors concerning the formal resolution of faculty grievances under Section 607 of the Code will be suspended for the duration of a mediation process being held pursuant to this policy.

IV.3.3.3.4 Hearing Procedure

IV.3.3.3.4.1 If mediation fails to produce a voluntary resolution, the Committee must decide whether a hearing should be held in response to the statement of appeal. For the purpose of determining whether a hearing should be held, the Committee must assume the truth of the information contained in the statement of appeal. A grievance properly is dismissed if the grievant fails to allege a remediable injury attributable to the alleged violation of a right or privilege based on federal or state law, university policies or regulations, or commonly shared understandings within the academic community about the rights, privileges and responsibilities attending university employment. Dismissal is required if the statement of appeal addresses a problem that is not within the Committee jurisdiction (a disciplinary issue or a matter that is the responsibility of another Committee, e.g., nonreappointment). If the Committee chooses to dismiss the case, its decision shall be made by the Committee within twenty (20) working days of the termination of mediation.

IV.3.3.3.4.2 If a hearing is held, the following procedure shall apply:

IV.3.3.3.4.2.1 The hearing shall be held no later than twenty (20) working days after the Committee chair receives notice that mediation did not produce a resolution. The Committee chair has authority to grant extensions on the chair's own motion or the motion of any of the parties. An extension may be issued only for good cause as determined by the Committee chair. An extension may not exceed ten (10) working days in length; however, more than one extension may be granted.

IV.3.3.3.4.2.2 The Committee shall serve a Notice of Hearing on the grievant, the administrator(s) who has been identified as a party to the grievance, and the Provost no later than ten (10) working days before the hearing. The notice shall include the date, time and place of the hearing, the grievant's request for appeal, the composition of the hearing body, the names of all parties to the grievance, and the issues to be considered by the Committee.

IV.3.3.3.4.2.3 Each party shall have a maximum of two challenges without cause and an unlimited number of challenges with cause to the composition of the Committee. Challenges shall be filed in writing with the Committee Chair at least five (5) working days in advance of the hearing. The unchallenged Committee members shall have the authority to decide whether a Committee member challenged for cause should be disqualified. If the Chair is thus removed, the Committee shall elect a new Chair after Committee replacements, if any, have been appointed. A minimum of five (5) members is required for any action taken. In the event that

fewer than five (5) members remain after challenges are allowed, the Secretary of the Faculty shall make temporary appointments in accordance with 1.7.2(e) of the Constitution.

IV.3.3.3.4.2.4 The hearing shall concern whether the grievance falls within the context of this document and whether a factual basis for the grievance, as set forth in the statement of appeal, has been established by the faculty member—i.e., the faculty member has the burden of proof.

IV.3.3.3.4.2.5 The formal rules of evidence shall not apply; however, the hearing chair has the authority to reject evidence which is repetitive or has no relevance to the issues. The issues to be heard are limited to those raised by the written grievance. The hearing will be open to the public unless any party to the grievance requests that it be private. Attorneys are not authorized to participate at the hearing on behalf of the parties. However, each party may select one (1) faculty member to provide assistance. The parties may present the testimony of witnesses and other evidence, may confront and cross-examine adverse witnesses and may examine all documents and other adverse demonstrative evidence. Committee members may question any witness and may call witnesses when the Committee deems such action appropriate. A tape recording of the hearing shall be kept. Upon request, a copy of the tape recording or transcript shall be furnished to the faculty member at cost.

IV.3.3.3.4.2.6 Presentation of evidence: the grievant presents, through documentation or testimony, the basis for the grievance. The administrator(s) named as a party may then present documentation or testimony in response. Rebuttal may be allowed at the discretion of the Committee.

IV.3.3.3.4.2.7 The Committee Chair shall have complete authority to ensure a full and fair hearing including, but not limited to, the authority to grant extensions, recesses and adjournments, require the taking of oaths, require witnesses to stay outside the hearing room before or after testifying, set time limits for arguments, and terminate or recess the proceeding if it becomes unproductive due to disruptive behavior. Normally, however, the hearing should be concluded no later than ten (10) working days after it begins.

IV.3.3.3.4.2.8 In developing its recommendations, the Committee shall consider only the evidence presented at the hearing and such written or oral arguments as the Committee in its discretion may allow. The Committee shall also make findings of fact to support its recommendation(s).

IV.3.3.3.4.2.9 If, after reviewing the statement of appeal or hearing the matter, the Committee determines that no adjustment in favor of the grievant is appropriate, it shall so advise the faculty member and the Provost within five (5) working days after termination of the hearing.

IV.3.3.3.4.2.10 If, after hearing the matter, the Committee determines that an adjustment in favor of the aggrieved faculty member is appropriate, the chair shall report its findings of fact and recommendations to the grievant, the other parties and the Provost within five (5) working days following the termination of the hearing.

IV.3.3.3.4.2.11 The administrator/party with authority to resolve the matters raised by the Committee recommendations shall have five (5) working days to serve a written response to the Committee recommendations upon the grievant and the Committee chair.

IV.3.3.3.5 Appeal to the Chancellor

IV.3.3.3.5.1 If the grievant is not satisfied with the disposition of the grievance, the grievant shall have five (5) working days to serve a simple statement of appeal upon the Chancellor and the Committee. Upon receipt of the statement of appeal, the Committee chair shall forward to the Chancellor the tape of the hearing, if a hearing was conducted, and all matters of record prepared and collected by the Committee including the written grievance, the Committee's findings of fact, the Committee's recommendation(s), the administrator's written response and all evidence gathered.

IV.3.3.4 The Chancellor's Decision Following Action by the Committee

IV.3.3.4.1 The Chancellor shall base his or her decision on the recommendation of the Committee and the record from the Committee hearing. The Chancellor may, in his or her discretion, consult with the Committee before making a decision. The consultation shall be scheduled through the Chair of the Committee and all Committee members who participated in the hearing shall be invited to attend. Neither new evidence nor new recommendations may be presented or received during such consultation. The Chancellor may bring one or more advisors to the consultation.

IV.3.3.4.2 The Chancellor shall notify the faculty member and the respondent administrator in writing of the Chancellor's decision. The notification shall include a notice of appeal rights, if any, and, if the decision is appealable, it shall contain the information specified in paragraph IV.3.3.5.1.3 below.

IV.3.3.5 Appeals to the Board of Trustees

IV.3.3.5.1Decisions which may be appealed.

IV.3.3.5.1.1 If the Committee did not advise that an adjustment in favor of the grievant was appropriate, then the decision of the Chancellor is final and may not be appealed.

IV.3.3.5.1.2 If neither the relevant administrative official nor the Chancellor makes an adjustment that is advised by the Committee in favor of the aggrieved faculty member, then the faculty member may appeal to the Board of Trustees. The decision of the Board of Trustees is final.

IV.3.3.5.1.3 If the Chancellor's decision is appealable, the Chancellor's notice of the disposition of a grievant's case must inform the grievant: (1) of the time limit within which the grievant may file a petition for review by the Board of Trustees, (2) that a written notice of appeal containing a brief statement of the basis of appeal is required within the ten working day period and, (3) that, after notice of appeal is received in a timely manner, a detailed schedule for the submission of relevant documents will be established. All such notices of decision are to be conveyed to the grievant by a method, which produces adequate evidence of delivery.

IV.3.3.5.1.4 The Board of Trustees may delegate to a designated Committee of the board the authority to make procedural decisions and to make final decisions on behalf of the board concerning appeals of faculty grievances submitted pursuant to section 607 of The Code.

IV.3.3.5.2 Timeline for Appeals

IV.3.3.5.2.1 A grievant who seeks to appeal the Chancellor's disposition of his grievance must file written notice of appeal with the Board of Trustees, by submitting such notice to the Chancellor, with adequate evidence of delivery, within ten (10) working days after the grievant's receipt of the Chancellor's decision. The notice shall contain a brief statement of the basis for the appeal. If the board agrees to consider the appeal, it will do so on a schedule established by the Chancellor, subject to any instructions received from the board or from a Committee of the board, which has jurisdiction of the subject matter of the grievance. The board will issue its decision as expeditiously as is practical. If the grievant fails to comply with the schedule established for perfecting and processing the appeal, the board in its discretion may extend the time for compliance or it may dismiss the appeal.

IV.3.3.5.3 Standard of Review: Unless a Board of Trustees provides by policy for a broader scope of review, in order to prevail before the Board of Trustees, the faculty member must demonstrate that the Chancellor's decision was clearly erroneous, that it violated applicable federal or state law or university policies or regulations, or that the process used in deciding the grievance was materially flawed.

IV.3.4 Changes to the Grievance Procedures shall be made in the following manner:

IV.3.4.1 Substantive changes (as defined by the Rules Committee of the Faculty Senate) shall be approved by the General Faculty according to procedures in Article VII of the By-laws of the General Faculty.

IV.3.4.2 Changes due to directives from general administration shall be made automatically with the General Faculty being informed by the Chair of the Faculty.

IV.3.4.3 Minor changes (as defined by the Rules Committee of the Faculty Senate) shall be made by the Faculty Senate with the General Faculty being informed by the Chair of the Faculty.

ARTICLE V The Faculty Hearing Committee

Section 1. Membership and Chair

V.1.1 The Faculty Hearing Committee shall consist of nine elected faculty members, each of whom shall have tenure. No officer of administration shall serve on the committee. For purposes of this section, "officers of administration" shall be deemed to include Department Heads. Appointment to department headship or to a higher level administrative position during a committee member's term of service shall force resignation from the committee.

V.1.2 At least one faculty member from each of the colleges of the university shall serve, but no more than one-half the members shall be from any one college. At least one member from each of the academic ranks of professor and associate professor shall serve on the committee. A member's promotion in rank during a term of office shall not terminate membership.

V.1.3 Each member shall serve a three-year term, the terms staggered so that three members are elected each year.

V.1.4 The Chair shall be elected by and from the membership of the Committee and shall serve for one year. The Chair may be elected to successive terms.

Section 2. Duties and Responsibilities

V.2.1 It shall be the duty of the Committee, at the request of the person affected, to conduct hearings in those cases provided for under Chapter VI of The Code.

V.2.2 Recommendations of the Faculty Hearing Committee shall be transmitted to the Chancellor, with a copy to the faculty member.

Section 3. Procedures

V.3.1 The due process provisions of Chapter VI of The Code apply to the work of this Committee. Additional procedures not in conflict with The Code may be adopted by the Committee. (See Tenure Policies and Regulations of Western Carolina University Section IV, VII, and VIII.)

V.3.2 Members of the Committee may decline to serve in a particular case for personal reasons. Members directly involved in a hearing shall not serve. Members who also served on the department, college, or university committee which made a decision not to reappoint or grant tenure to the faculty member shall not be eligible for service on the Committee.

V.3.3 All proceedings must be heard by no fewer than seven members. In the event that fewer than seven members are available, the Secretary of the Faculty shall make temporary appointments in accordance with 1.7.2 (e) of the Constitution.

Section 4. The appeal procedures are provided in Chapter VI of The Code.

ARTICLE VI Duly-constituted Committees

Section 1. Duly-constituted committees, as specified in Articles III 8.2, IV 5.2, V 4.2, and VI 5.2 of the Constitution, are appointed by the Provost or the appropriate Dean for the purpose of reviewing and searching for academic administrators at the levels of Dean, Department Head, and Dean of Library Services.

Section 2. Membership, duties, and procedures shall be established by the respective colleges, departments, and the library with the advice of the Faculty Senate.

ARTICLE VII Changes in By-laws

Section 1. A recommendation to repeal or amend any or several of the provisions of the By-laws shall be made at the regular meeting of the Faculty Senate preceding that at which the vote on such recommendation is taken.

Section 2. A two-thirds majority of the Senate present and voting shall be necessary in order to recommend the repeal or amendment of the By-laws to the General Faculty.

Section 3. The faculty may amend or repeal, with the consent of the Chancellor, any part or all of the By-laws of the General Faculty. Proposals to amend or repeal shall be discussed at an open forum called by the Chair of the Faculty during the regular academic year. The proposals and notice of the open forum shall be sent to the faculty at least ten days prior to the forum. The proposals shall be acted upon by the General Faculty, the vote to be conducted by electronic ballot within one week following the discussion. Actions to repeal or amend shall not be effective unless approved by two-thirds of the members voting.