

XXI. GRIEVANCE PROCEDURE

Whenever a faculty member (or members) wishes to make a formal complaint against a member (or members) of the College staff, and if redress for this complaint is not covered by the procedures for dismissal or termination, the following procedure shall apply to all grievance matters, including charges of discrimination based on race, color, national origin, sex, age, or handicap.

1. The person or persons wishing to file a complaint shall do so within one year of the occasion or event giving rise to the grievance. The complaint shall be presented in writing to the President and the chair of the Faculty Review Committee.
2. The chair of the Grievance Committee shall be responsible for undertaking all preliminary measures, e.g., convening the involved parties for the selection of the second and third committee members.
3. Within 15 days following the formation of the Grievance Committee, the person who initiates grievance proceedings shall submit to the Grievance Committee a written statement defining the nature of the complaint and the names of persons against whom it is made.
4. If the Grievance Committee rules that the alleged grievance merits examination, then the complainant's statement will be forwarded to the persons against whom the complaint is made and copies sent to the President, the Dean of the College, and to the appropriate Vice Presidents or Associate Deans and department chairs.
5. Those against whom the complaint is made shall respond in writing within 15 days; the complainant may choose to be present when the committee receives those responses.
6. Hearings of the committee are open only to persons invited by the committee.
7. Whenever the parties to a dispute are present at a meeting or a hearing held by the committee, both have the right to have an adviser of their choosing from the faculty or the staff of the College.
8. If the complainant or the persons against whom the complaint is made believes that additional information may be obtained from witnesses, either or both parties to the dispute may name witnesses who will then be called to testify; the committee may limit the number of witnesses, provided that the number is fairly divided between the parties.
9. Having heard the testimony of the named witnesses, the committee may seek information from whatever other sources seem necessary.
10. Both parties to the dispute have the right to hear the testimony of all witnesses and the right to knowledge of all other evidence on which the committee may base its findings.
11. The committee may question all persons involved in the hearing and has the power to determine the extent to which the parties to the dispute may question each other and each other's witnesses.

12. If agreement between the parties to the dispute has not been reached upon completion of the hearing, the committee shall submit its findings of fact and its attendant recommendations, if any, in writing to the President, the Dean of the College, the appropriate Vice President or Associate Deans and department chairs, the complainant, and the persons against whom the complaint is made. The President, within 30 days shall decide what, if any, action shall be taken. Aggrieved parties, within 30 days, may appeal the President's decision to the Board of Regents. The Board, within 120 days, shall make the final decision.

13. The committee in consultation with the President shall determine the extent to which the records of its hearing and meetings on each case may be accessible to the public.

14. After the committee has submitted its report, all records of its hearings and meetings shall be placed in custody in the President's office.

XXII. APPEALS PROCEDURE

1. Appeal Rights

The purpose of this policy is to provide appeal rights to faculty members for these specific circumstances: to a tenure-track faculty member who is denied reappointment, promotion, or tenure; to a tenured faculty member who is denied promotion; to a faculty member who is denied annual renewal within a multiple-year term appointment.

- a. An appeal must be based upon one or more of the grounds for appeal provided herein.
- b. The remedy available through this procedure is that some or all of the applicable procedures be reviewed or repeated and the College's decision be reconsidered.

2. Grounds For Appeal of Renewal, Reappointment, Tenure and Promotion Decisions

The grounds upon which appeals may be made are (1) improper consideration and/or (2) inadequate consideration.

- a. An appeal may allege that a decision against renewal, reappointment, tenure, or promotion was based significantly on improper consideration because the review process involved at least one of the following: (1) violation of academic freedom, or (2) unlawful discrimination, or (3) violation of applicable College policies on discrimination.
- b. An appeal may allege that a decision against renewal, reappointment, tenure, or promotion, was based significantly on inadequate consideration of the evidence and/or of applicable evaluation standards for the relevant decision. The evaluation standards set forth in Section 4.VII of the Faculty Manual shall apply. An allegation of "inadequate consideration" refers to concerns whether the department or departments, Tenure and Promotion Committee, the Dean of the College, and/or the President used applicable standards and appropriate evidence in reaching their decisions.

For the purposes of this policy, the term "adequate consideration" refers essentially to procedural issues having a bearing on the substance of the decision. The standard of adequate consideration would suggest these kinds of questions: "Was the decision conscientiously arrived at? Was all available evidence bearing on the relevant performance of the candidate sought out and considered? Was there adequate deliberation by the department over the import of the evidence in light of the relevant standards? Were irrelevant and improper standards excluded from consideration? Was the decision a bona fide exercise of professional academic judgment?" (AAUP Policy Documents and Reports, 1995 Ed., p. 20). Thus, a finding of inadequate consideration involves a critique of process and not a substitution of the Committee's own judgment on the merits.

3. Initiating an Appeal

- a. To initiate an appeal, the faculty member shall deliver a written petition to the Chair of the Faculty Review Committee, the Office of the President, and the Office of the Dean. The petition must be delivered within sixty (60) calendar days of receipt of official written notice of the decision, or within forty (40) calendar days of receipt of official written notice of the reasons which contributed to the decision (see Section XII), whichever is later. In exceptional cases, the President may grant an extension of the deadline
- b. The petition must state the decision being appealed, the grounds for appeal and a statement of evidence in support of the allegations. The burden of proof rests upon the appellant to establish a prima facie case. A prima facie case has been established if the appellant's petition contains statements alleging facts, which, if they were uncontradicted, would reasonably allow the Faculty Review Committee to conclude that the College's decision was based on improper consideration and/or inadequate consideration.

4. Faculty Review Committee Preliminary Response

- a. Within fourteen (14) calendar days of their receipt of the petition, the Faculty Review Committee members shall meet to determine whether: the faculty member has alleged a proper basis for appeal; the appeal was commenced within the deadline; and the appellant has established a prima facie case. The Committee will establish its own procedures for this preliminary meeting.
- b. If the Committee determines that proper grounds for an appeal have not been alleged, or that an appeal has not been timely commenced, or that a prima facie case has not been established, it shall so notify the appellant, the President and the Dean of the College, and no further action shall be taken in review of the appeal.
- c. If the Committee determines that proper grounds have been alleged, and that the appeal is timely, and that a prima facie case has been established, the Committee shall next determine how best to conduct its review of the appeal. Depending upon the facts and circumstances of each particular case, the Committee may request the parties to state their positions in writing, and make a determination based upon these submissions, or the Committee may choose to hold a hearing.

5. Faculty Review Committee Procedures

a. At all hearings of the Committee, the appellant shall have the right to have present an advisor of the appellant's choosing from among the faculty and staff of the College. The College shall be represented at all hearings of the Committee by the Dean of the College who may select and have present an advisor from the faculty or staff of the College. The role of the advisors is to listen to the proceedings, offer advice to the advisee, take notes, and provide personal support to the advisee. Hearings of the Committee are open only to the appellant, the Dean of the College, the advisors to the appellant and the Dean, and other persons invited by the Committee.

b. The Committee may seek to obtain information from whatever sources it deems necessary. If the appellant or the Dean believes that additional information would be useful from witnesses, or that additional documentary evidence would be helpful, either or both may so inform the Committee, which will determine whether to seek additional testimony or evidence. With the consent of the appellant, the Committee is entitled to access to the appellant's dossier and personnel documents used by individuals or committees in making the original decision.

c. The Committee shall have discretion to determine the manner and order in which it shall take evidence. It may question all persons involved in the hearing. Neither the appellant nor the Dean, nor either of their advisors, if any, may question witnesses without the consent of the Committee. Rules of evidence and other rules and procedures applicable to a court of law need not apply. While protecting the confidentiality of contributions to the dossier, both parties to the dispute have the right to hear testimony of all witnesses and the right to knowledge of all other evidence on which the committee may base its findings.

d. All hearings and deliberations of the Faculty Review Committee shall be conducted confidentially. All participants are bound to keep confidential the evidence and testimony presented or reviewed in the hearings and deliberations. This provision is not intended to limit the ability of the appellant or the College to communicate freely with attorneys, governmental agencies or as otherwise allowed or required by law.

e. The Faculty Review Committee shall make audio recordings of all hearings.

6. Actions of the Faculty Review Committee

a. The Faculty Review Committee is charged with studying the merits of the appeal and reporting its findings to the President within thirty (30) calendar days of the Committee's preliminary meeting.

b. The Faculty Review Committee shall not substitute its judgment on the merits of the decision for that of appropriate faculty bodies, the Dean or the President as to the faculty member's suitability for renewal, reappointment, tenure, or promotion, but instead shall limit its findings of fact to the following:

- 1) Whether improper considerations have occurred and likely have affected the decision(s).

2) Whether inadequate consideration of the evidence and/or of applicable evaluation standards for the relevant decision have occurred and likely have affected the decision(s).

c. If the Committee finds improper and/or inadequate consideration, the Committee shall recommend to the President that some or all of the applicable procedures be reviewed or repeated and that the decision be reconsidered. The Committee shall prepare a report explaining why the Committee arrived at its findings and identifying which procedures shall be reviewed or repeated and by whom. The President shall provide copies of the Committee's report to the Dean of the College, the appellant, and, as appropriate, individuals or committees involved in the original decision. The findings and contents of the report shall otherwise remain confidential.

d. If the Committee finds improper and/or inadequate consideration on the part of the President alone, the Committee report shall recommend to the President that the President's decision be reconsidered. The report of the Committee shall explain why the Committee arrived at its findings. The President shall provide copies of the Committee's report to the Chair of the Board of Regents, the Dean of the College, the appellant, and, as appropriate, individuals or committees involved in the original decision. The findings and contents of the report shall otherwise remain confidential.

e. All audio recordings and all written records of the Committee shall be placed in the custody of the President's Office for a period of seven (7) years after the appellant faculty member ceases employment at the College.

7. Actions of the President

a. Within seven (7) calendar days of receipt of the Faculty Review Committee Report, the President will either reverse the decision without further consideration or direct that some or all of the applicable procedures be reviewed or repeated as identified in the Committee's report. The directive for reconsideration shall include specific instructions for individuals or committees and shall state specific deadlines for reconsideration.

b. Within seven (7) calendar days of receipt of all required responses for reconsideration from individuals and committees, the President will either reverse the decision or let stand the original decision and notify the appellant, the Dean, and other individuals or committees involved in the appeal. If the President decides to reverse the original decision, positive recommendations for renewal, reappointment, promotion, and tenure will be forwarded to the Board of Regents for final action. If the President decides to let stand the original decision, this decision of the President cannot be appealed further under this Appeals Procedure.

The President's notification to reverse or let stand the original decision should include an explanation for the decision.

8. Action by the Board of Regents

a. After the process outlined in Section 4.XXII.7 has been completed, and if the Committee has found that the President alone made improper and/or inadequate

considerations that likely affected the decision, and if the President decides not to reverse the original decision, the appellant may appeal the decision of the President to the Board of Regents by writing to the Chair of the Board.

b. After the Board has completed its review, the Board will either reverse the decision or let stand the original decision and the Board Chair will notify the appellant, the President, the Dean, and other individuals or committees involved in the appeal.

c. The Board Chair's notification to reverse or let stand the original decision should include an explanation for the decision.