

PROCEDURES FOR APPEALING A NEGATIVE DECISION ON PROMOTION TO FULL PROFESSOR

NOTE: It is assumed that the *Academic Appointments Manual* will be changed to incorporate the following:

1. After some definite number of years of service as a tenured professor, a faculty member has a right to a review for promotion to full professor. If the faculty member does not wish to be reviewed, the review will not take place.
2. If the initial review does not result in promotion, the faculty member has a right to at least one subsequent (and perhaps more) reviews within some definite period of time.
3. A dean will not reject a departmental recommendation to promote a faculty member to full professor without first having appointed and received the report of an ad hoc committee.

I. RIGHTS OF FACULTY MEMBERS WHO ARE DENIED PROMOTION TO FULL PROFESSOR

A. Right to Appeal

Any tenured faculty member who is reviewed for and denied promotion to full professor may appeal that decision at the departmental, college, and University levels subject to the limitations in I.B. The candidate shall be informed of this right, and the procedures for exercising it, when he or she is first notified of a negative promotion decision.

B. Limitations to the Right of Appeal

A faculty member who is denied promotion may appeal that decision even though he or she was denied promotion on a previous occasion and appealed that decision. However, a University level appeal may not address issues that were settled in a prior appeal, but must be based on evidence that was not previously presented at a University level appeal proceeding.

C. Role of the Ombudsman

Faculty members shall retain full access to the office of the Ombudsman prior to and in the course of the appeals process.

D. Waiver or Loss of Appeal Rights

The candidate may waive the right to written explanations from the department chair and the dean, or may decline to pursue the appeals procedure at any stage. However, the appeals procedures herein described must be followed sequentially. Waiver of any stage of the appeals procedure shall cause the candidate's right to proceed further to be forfeited. Thus,

failure to request reconsideration of a negative departmental decision (see Section II), or failure to respond to a negative proposed decision at the college level (see Section III), will constitute waiver of further appeal rights of this particular decision.

[Note: Should any party involved in an appeal find that he or she is unable to comply with one or more of the deadlines specified in this document, that party may, prior to the lapsing of the deadline, apply to the Dean of the Faculty for an extension. If the Dean finds the reasons given for an extension sufficient to justify it, the extension shall be granted and all involved parties notified. All extensions shall be for a specified period of time.]

II. APPEAL AT THE DEPARTMENTAL LEVEL

A. Reconsideration by the Department

Any tenured faculty member has a right to receive a timely reconsideration of a departmental decision not to promote to full professor before that decision is forwarded to the dean.

1. Within three weeks after being notified that the departmental decision is negative, the candidate will receive a written statement of the reasons for the decision and the nature of the evidence unless the candidate expressly relinquishes his or her right to receive the statement within one week of said notice. The statement shall respect the limits set by the need to preserve confidentiality.
2. If the candidate wishes to have the departmental decision reconsidered, he or she shall respond to the chair in writing within three weeks of receipt of the chair's statement of reasons. The candidate may address any issue that he or she deems appropriate, and may present new evidence.
3. The eligible voting faculty shall consider the chair's statement and the candidate's response, and a second vote shall be taken. The final departmental decision and the reasons for it shall be provided in writing to the candidate within three weeks of receipt of the candidate's response.

[Note: In schools or colleges without departmental structure "departmental" shall refer to the group of full professors who vote on the recommendation that is forwarded to the dean, and "chair" shall refer to an appropriate faculty member.]

III. APPEAL AT THE COLLEGE LEVEL

A. Review by an Ad Hoc Committee

If the department's final decision is negative, the dean shall, at the request of the candidate, appoint an ad hoc committee to review that decision, if the dean has not already done so on his or her own initiative. The candidate shall make his or her request for appointment of the committee within one week of notification of the department's final negative decision, and the dean shall appoint the committee within three weeks of the candidate's request.

[Note: In those schools or colleges that do not use ad hoc committees in the case of positive departmental recommendations, III.A. shall not apply.]

B. Reconsideration by the Dean

1. If a dean's negative decision follows a positive departmental recommendation, the dean shall, within three weeks of receipt of the report of the ad hoc committee, furnish the candidate and the department with a preliminary written statement of the reasons for that decision and the nature of the evidence within the limits set by the need to preserve confidentiality. For a two-week period following receipt of the statement, the candidate and/or department shall have the opportunity to respond to the dean, prior to the dean's final decision.

2. If the dean's negative decision follows a negative departmental recommendation, the dean shall within three weeks of receipt of the report of the ad hoc committee furnish the candidate and the department with a written statement of the reasons for that decision, within the limits set by the need to preserve confidentiality.

[Note: In those schools or colleges that do not use ad hoc committees in the case of positive departmental recommendations, and therefore do not use them in III.A., the three week time period after which the dean must reply shall start when the dean receives the report of the appropriate faculty group.]

IV. APPEAL AT THE UNIVERSITY LEVEL

A. Filing an Appeal

If the dean's final decision is negative, the candidate or the department (with the written consent of the candidate) or the candidate and the department in concert, may appeal that decision. The appeal must be filed in writing with the dean of the college and the Dean of the Faculty within two weeks of notification of the dean's decision and must state the specific reasons for the appeal. The reasons must be based on one or more of the grounds listed in the following Section (IV.B.), and must be based on evidence that was not presented in any prior appeal at the University level. Failure to raise a particular reason when filing the appeal may be treated as a waiver of such a claim in this or any subsequent procedure during this appeal process.

B. Grounds for an Appeal

The grounds for an appeal shall be limited to one or more of the following:

1. In the conduct of the promotion review, there were violations of the established procedures and practices of the department, the college, or the University. These violations were so serious that the Appeals Committee believes they affected the outcome of the promotion review.

2. The evaluation of the appellant was influenced by unlawful discrimination.
3. The evaluation of the appellant was substantially influenced by consideration of factors unrelated to the performance of the appellant in carrying out the professional and collegial responsibilities of his or her position, or by improper and unprofessional consideration of factors which, if properly considered, would be material and relevant. The violations were so serious that the Appeals Committee believes that they affected the outcome of the promotion review.
4. The decision was so inconsistent with the evidence in the record that it must be judged arbitrary or capricious. [Note: The term arbitrary and capricious fundamentally describes actions which have no sound basis in law, fact or reason or are grounded solely in bad faith or personal desire. A determination is arbitrary and capricious only if it is one no reasonable mind could reach.]

C. Selection of an Appeals Committee

An appeal shall be heard by an Appeals Committee composed of five full professors in the University. Within two weeks after the appeal of a college dean's negative decision, the Dean of the Faculty shall be responsible for forming and charging an Appeals Committee to hear the appeal. Members of the Appeals Committee shall be selected in the following manner:

1. The appellant and the dean of the college shall each nominate four members of the University Appeals Panel. [Note: In cases where the appeal follows a decision by the department not to promote to full professor, the dean of the college shall consult with the department before making his or her nominations.] The appellant's nominees shall choose two of the dean's nominees, and the dean's nominees shall choose two of the appellant's nominees. The four so chosen shall then choose a fifth full professor in the University, who shall chair the committee. The chair shall be from the college of the appellant, except in those colleges where all full professors participate in each promotion decision.
2. Any person nominated who has previously participated in the review of the appellant or feels unable to render an unbiased judgment or perceives a conflict of interest shall disqualify him or herself. However, in those colleges where all full professors participate in each promotion decision, the automatic disqualification of that college's Appeals Committee members shall be waived if that is agreeable to both parties.

D. Principles and Restrictions to be Observed by the Appeals Committee

In its deliberations and findings, the Appeals Committee shall respect the following principles and restrictions:

1. The Committee's review shall be limited to determining whether any one of the four possible grounds for appeal (listed in Section IV.B.) has been established. The Committee may, if circumstances warrant, investigate and return findings concerning possible violations of the grounds for appeal (listed in Section IV.B.) not raised by the appellant.

2. The Committee shall recognize the central role of peer judgment in promotion decisions. Hence, the Committee shall avoid substituting its assessment of the appellant's professional qualifications for those of the department and the experts outside the department who have been asked to submit evaluations. The Committee's role in judging professional merit shall be limited to determining whether the recommendations of the department and the dean were arbitrary and capricious as defined in IV.B.4., or based on the inappropriate considerations listed in IV.B.2. and IV.B.3.

3. The dean of the college has a major responsibility in maintaining the standards of the college. Therefore, the Committee shall avoid substituting its judgment in those matters for that of the dean.

4. It is impossible to make precise and universally agreed-upon evaluations of candidates. Therefore, the possibility that a different group of reasonable people might have come to a different conclusion concerning the merits of the appellant is insufficient grounds to sustain the appeal.

5. Comparisons with other promotion review cases may be used by the Committee in certain cases (see Section IV.E.1.). However, the Committee shall recognize the right and duty of departments to raise the standards for promotion to full professor or take into account different departmental needs or particular individual circumstances, so long as this is not done as a pretext. A weak previous promotion to full professor shall not by itself be taken to define the departmental standard for promotions.

6. If a faculty member has appealed a previous decision not to promote to full professor, the Appeals Committee shall not reconsider the decision of the previous Appeals Committee, or the evidence upon which it was based.

E. Appeals Committee Procedures

The following procedures shall govern the activity of the Appeals Committee:

1. The Committee shall have access to the promotion file of the appellant. If the appellant charges that the decision was arbitrary or capricious as defined in Section IV.B.4 or based on the inappropriate considerations listed in Sections IV.B.2 and IV.B.3. and if the Committee finds it essential to read the files of recent comparable cases within the college of the appellant to examine that charge, it shall have access to those files as well. However, in its request for access to a particular file, the Committee shall state in writing how each particular comparison case satisfies the following criteria:

a. It is sufficiently recent.

b. It is sufficiently comparable in circumstances.

c. It is impossible to examine the allegation made by the appellant without access to the requested file.

The Committee shall scrupulously protect the confidentiality of all documents and testimony.

2. In addition to examining written material, the Committee may hear the views of the principal parties and others it deems appropriate.

3. The Committee shall not be required to keep a transcript of its proceedings. The Committee shall maintain a record of the names of the persons interviewed and the titles of the documents considered.

4. The Committee shall report in writing within eight weeks after being formed. The report shall be furnished to the appellant and the department and the college dean. It shall give the Committee's findings, and the reasons for those findings. These findings should be directly responsive to the grounds for appeal listed in Section IV.B. Before issuing the report, the Committee shall circulate a draft to the appellant and the department and/or college dean and invite responses.

F. Findings by the Appeals Committee

The Appeals Committee shall make one or more of the following findings. The ensuing action shall be as stated:

1. If the Committee finds that none of the four possible appeal grounds (see Section IV.B.) has been established, it shall reject the appeal. This decision shall not be subject to further appeal within the University.

2. If the Committee finds that the ground for appeal has been established, it may return the case to the dean of the college for reconsideration. The dean shall promptly take appropriate action to correct the deficiencies that the Committee has found, and shall provide a written report of the reconsidered decision to the Committee, the department, and the appellant. If the reconsideration results in an affirmation of the original decision, this judgment shall be reviewed by the original Appeals Committee, which shall take the following action:

a. If the Appeals Committee finds that the promotion review process no longer has serious deficiencies, it shall reject the appeal. This action shall not be subject to further appeal within the University.

b. If the Committee finds that the promotion review process continues to have serious deficiencies, it shall forward its findings to the Provost for final action. Within four weeks, the decision of the Provost and the reasons for it shall be given in writing to both principal parties, and a copy shall be sent to the Committee. The decision of the Provost shall not be subject to further appeal within the University.

V. DISPOSITION OF RECORDS AND FILES

A. The Dean of the Faculty shall maintain copies of all reports of Appeals Committees and shall maintain records of all subsequent actions within the University that occur in these cases. At the completion of an appeal, all case files shall be returned to the dean of the college.

B. On completion of the appeal, the chairperson of the Appeals Committee shall provide to the Dean of the Faculty a letter describing any difficulties encountered in applying or interpreting these procedures. The Dean of the Faculty shall maintain a file of these letters, a digest of their central points, and other documents useful to subsequent appeals committees or to anybody authorized by the FCR to evaluate these procedures.

Adopted by the Faculty Council of Representatives, May 13, 1981, Records, pp. 5342-54C; Executive Committee, Board of Trustees, May 30, 1981, Records, p. 10,808, Appendix D, Records, pp. 10,839-45; Board of Trustees, May 30, 1981, Records, p. 10,856; Faculty Council of Representatives, October 10, 1984, Records, pp. 5923-39C (with editorial and stylistic changes incorporated by the Dean of Faculty and University Counsel); Board of Trustees, January 25, 1985, Records p. 357, Appendix A, Records, pp. 379-84.