

DRAFT

University of Maryland Baltimore County Promotion and Tenure Appeals Procedures

1. Purpose

The purpose of these procedures is to ensure that every candidate for promotion or tenure shall receive a fair and thorough review. The Faculty Review Appeals Committee shall serve as an advisory committee to the President of the University (“President”). The responsibilities and powers carried out by the Faculty Review Appeals Committee shall not abrogate the role of the UFRC during the promotion and tenure process.

2. Faculty Review Appeals Committee Membership

The President will solicit candidates for the Faculty Review Appeals Committee from academic departments, the Deans of the Colleges, and the Senate Executive Committee for review of any appeal of a denial of promotion or tenure. The President shall submit the names of two (2) candidates for each seat on the Faculty Review Appeals Committee. At its May meeting, the Faculty Senate shall elect Faculty Review Appeals Committee members by a majority of those present and voting.

The Faculty Review Appeals Committee shall be a standing committee composed of five (5) tenured faculty members, with representation from each of the academic colleges (CAHSS, CNMS, COEIT), if possible, and two (2) additional at-large members. Appointment to the Faculty Review Appeals Committee shall be for two (2) years. The term of appointment of all members shall be staggered and members may not serve two consecutive terms.

The Chair of the Faculty Review Appeals Committee shall be elected by majority vote annually in May of each year from among the members of the Faculty Review Appeals Committee and shall be a voting member.

No one currently serving on the UFRC or who has served on the UFRC in the immediate preceding academic year shall serve on the Faculty Review Appeals Committee.

3. Grounds for Appeals

The grounds for appeal of a decision to deny promotion or tenure shall be limited to violations of substantive due process and/or procedural due process.

Violation of substantive due process means that: (a) the decision was based upon an illegal or constitutionally impermissible consideration, e.g. upon the candidate's protected status as outlined in the University's Notice of Non-Discrimination or on the candidate's exercise of protected First Amendment freedoms (e.g., freedom of speech); or (b) the decision was arbitrary or capricious, e.g. it was based on erroneous information, or the decision was clearly inconsistent with the supporting materials and information contained within the dossier.

Violation of procedural due process arises when the decision was negatively influenced by a failure during the promotion and tenure review to take a procedural step or to fulfill a procedural requirement established in promotion and tenure policy or review procedures of a department or college.

4. Burden of Proof

The burden of proof rests with the appellant at all times. The appellant bears the burden of supporting via the preponderance of the evidence that a substantive due process violation and/or procedural due process violation occurred. Preponderance of the evidence means that the existence of the fact in issue is more probable than not, is based on the more convincing evidence and its probable truth or accuracy, and not on the amount of evidence.

The preponderance of the evidence standard would be met where the Committee members find that the evidence supporting the allegation(s) in the appeal are more convincing than the opposing evidence.

5. Guidelines and Procedures for Appeals

Upon notification from the President that promotion or tenure was not awarded, the candidate may appeal the decision by requesting that the President submit the matter to the Faculty Review Appeals Committee for consideration.

The request for an appeal shall be in writing and submitted to the President, via hand-delivery or mail and electronic mail, within twenty (20) University business

days of notification of the negative decision. The request must detail the basis for the appeal with specificity and include evidence to support the claims.

The request for an appeal shall also include any requests for removal of Faculty Review Appeals Committee members, including the Chair, and state with specificity the reasons for the requested removals, as detailed in Section 7 below.

The President will determine, within ten (10) University business days of receipt of the request for an appeal, whether to grant the request for an appeal based on the criteria stated in Section 3 above. If the President grants an appeal request, the Faculty Review Appeals Committee will be convened. The President shall notify the appellant and the Faculty Review Appeals Committee in writing, via mail and electronic mail that the appeal request has been granted and the accepted grounds for appeal.

If the President declines an appeal request, the President's decision and rationale shall be sent, via hand-delivery or mail and electronic mail, to the appellant.

Upon receipt of notice from the President that the appeal request has been granted, the Faculty Review Appeals Committee Chair, or a designee from the Faculty Review Appeals Committee, shall notify the relevant administrators, department chair, UFRC chair, and DP&TC chair, within in five (5) University business days, in writing via mail or electronic mail of the accepted ground(s) for appeal.

The appellant will then have an additional twenty (20) University business days in which to submit any additional supporting materials, via hand-delivery, mail, or electronic mail, related to the appeal to the Faculty Review Appeals Committee, unless this date is otherwise extended by the President because of circumstances beyond the control of the appellant. The Faculty Review Appeals Committee Chair or a designee from the Faculty Review Appeals Committee shall send the appellant an electronic mail message acknowledging receipt of the additional information within seven (7) University business days of receipt.

The appellant should be aware that the materials submitted with the appeal will be shared with parties against whom allegations are made and any other persons deemed necessary by the Faculty Review Appeals Committee to carry out their responsibilities.

Faculty members with questions regarding this process should contact the Vice Provost for Faculty Affairs.

6. Request for Extension of Time

A request for extension of time for filing the request for an appeal or for filing additional supporting materials shall be submitted, in writing, to the President via hand-delivery or mail and electronic mail. The burden rests with the appellant for establishing a reasonable basis for requesting an extension of time. The President shall make a determination of whether the request for extension of time is reasonable, and shall respond to the appellant in writing, within seven (7) University business days, whether the request will be granted.

7. Conflict of Interest

Except in extenuating circumstances, the appellant may request the removal of no more than two (2) Faculty Review Appeals Committee members, including the Chair, for cause when the appellant believes the members and/or Chair would be unable to evaluate the appeal impartially.

In filing a request for removal of a member and/or Chair, the appellant must state with specificity why the appellant believes the member and/or Chair would be biased or partial. The Faculty Review Appeals Committee will determine whether there is reasonable cause to remove/dismiss the member and/or Chair by simple majority vote.

Any Faculty Review Appeals Committee member or Chair who feels that their participation may have the appearance of a conflict of interest should recuse themselves. Any member or Chair who feels they will have difficulty being objective in a given case shall recuse themselves.

Members of the Faculty Review Appeals Committee, including the Chair, who are from the appellant's department or from interdisciplinary programs with which the appellant is affiliated, should recuse themselves.

If recusals or removals of the Chair and/or members reduce the size of the Committee to fewer than five (5) members, the Faculty Senate President shall find replacements to return the Faculty Review Appeals Committee to full strength.

8. Responsibilities and Powers of the Faculty Review Appeals Committee

The Faculty Review Appeals Committee shall make a determination as to whether or not a substantive due process violation and/or procedural due process violation has been demonstrated via the preponderance of the evidence. The Faculty Review Appeals Committee shall not serve as an advocate for any party to the appeal process and shall not substitute its judgment on the merits of the appellant's dossier for the judgment of any divisional promotion or tenure committee or the President.

The Faculty Review Appeals Committee shall conduct inquiries that are investigatory and strictly limited to the issues related to the accepted grounds for appeal. The Faculty Review Appeals Committee has investigative powers which include, but are not limited to, requesting and examining documents directly related to the promotion or tenure case under appeal, interviewing the appellant, and interviewing other individuals who have information relevant to the promotion or tenure case under appeal.

The Faculty Review Appeals Committee shall examine all documents related to the appellant's promotion or tenure review and may request to have access to such other departmental and college materials as it deems relevant to the appeal. Whenever the Faculty Review Appeals Committee believes that a meeting could lead to a better understanding of the issues in the appeal, it shall meet with the appropriate party (with the appellant or with the relevant academic administrator, member(s) of the UFRC, member(s) of the DP&TC, and department chair).

The Chair of the Faculty Review Appeals Committee will preside over all meetings. If the Chair is unable to attend, or is recused or removed, the members will choose a temporary replacement, and communicate that information to the appellant and the President.

The Faculty Review Appeals Committee shall make every effort to schedule meetings with the appellant as expeditiously as possible, with due regard for the appellant's academic and personal obligations. The Faculty Review Appeals Committee shall notify the appellant of meetings with the appellant, in writing *or* electronic mail at least five (5) University business days prior to the meeting date. The appellant is entitled to appear before the Faculty Review Appeals Committee to present the appellant's case orally in addition to the written presentation.

There shall be no audio or video recordings of the Faculty Review Appeal Committee meetings. A designated member of the Committee will take notes, which will become part of the official appeal record.

If an appellant requires a disability-related accommodation, they shall immediately notify the Chair of the Faculty Review Appeals Committee. The Chair will refer the appellant to the University's Office of Human Relations to work in consultation regarding the disability-related accommodation request.

The Faculty Review Appeals Committee will conduct separate interviews and follow-up interviews, if needed, of the appellant, witnesses, others having knowledge of the matter, and appropriate administrative officials. Meetings before the Faculty Review Appeals Committee will not be open to the public.

The decision of the Faculty Review Appeals Committee shall be determined by a simple majority of its members. The Faculty Review Appeals Committee may decide to recommend to the President that corrective action be granted, that a remedy be granted wholly or in part, or it may recommend denial of corrective action or a remedy. The Faculty Review Appeals Committee's decision is not binding, and serves only as a recommendation to the President.

9. Faculty Review Appeals Committee Findings and Recommendations

Except in extenuating circumstances, the Faculty Review Appeals Committee shall prepare a written report for the President, no later than November 1 of the calendar year in which the request for an appeal is filed.

The report shall include findings with respect to whether or not the grounds for appeal were supported by a preponderance of the evidence, and, where appropriate, recommendations for a remedy and/or corrective action. Such remedy may include the return of the matter back to the level of the review process at which the violation of substantive due process and/or procedural due process occurred and action to eliminate any harmful effects it may have had on the full and fair consideration of the promotion or tenure case. No recommended corrective action and/or remedy may abrogate the principle of peer review.

10. President's Decision

The President shall accord great weight to the findings and recommendations of the Faculty Review Appeals Committee. The President's subsequent decision shall be final. Except in extenuating circumstances, the President's decision and rationale shall be transmitted to the appellant, in writing, within ten (10) University business days from the date the Faculty Review Appeals Committee report is received.

11. Implementation of President's Decision

When the President supports the grounds for an appeal, the Provost has the responsibility for oversight of the implementation of the remedy and/or corrective action the President requires to be taken. Except in extenuating circumstances, the Provost shall formulate a plan and a timeline for implementing and monitoring the remedy and/or corrective action, within ten (10) University business days of receipt of the President's decision.

12. Professional Conduct and Confidentiality

All those involved in the appeals process shall adhere to the highest standards of professional conduct, shall focus on factual information, and shall avoid practices that would conflict with their ability to be fair and unbiased.

The material under review, the substance of the Faculty Review Appeals Committee discussions, and their final recommendation are confidential, except as disclosures are reasonably necessary in the appeals process. However, confidentiality can only be respected insofar as it does not interfere with the University's obligation to address the appeal, or to fulfill duties imposed by law, including but not limited to, the Maryland Public Information Act, responses to lawfully issued third-party subpoenas, and responses to discovery requests in litigation.

13. Legal Representation

Attorneys may not appear with or on behalf of the appellant, witnesses, or the University in proceedings before the Faculty Review Appeals Committee. It is assumed that either party may rely on legal counsel in the preparation of any

documents or the collection of any evidence to be presented to the Faculty Review Appeals Committee.

14. Appeal File

The Faculty Review Appeals Committee will establish a confidential appeal file as soon as a notice of the appeal has been received from the President, which will be maintained by the Office of the Senate. All documents collected, notes of interviews, the original appeal and any other relevant material shall be maintained in this file. Minutes of the Faculty Review Appeals Committee meetings will be a part of the confidential appeal file. The confidential appeal file is available only to members of the Faculty Review Appeals Committee and the appellant, subject to other University administrators and officials, on a need to know basis to carry out University obligations. Confidential appeal files shall be kept for a period of five years or for the duration of any legal process, whichever is greater.