

COMMITTEE ON FACULTY AFFAIRS, ACADEMIC FREEDOM, AND TENURE:

FACULTY GRIEVANCES

This statement elaborates on the University's procedure for addressing faculty grievances as described in the University Statutes, the Senate By-laws, and the Faculty Handbook. If an inconsistency should arise between the Faculty Handbook and this statement, the Handbook will take precedence.

Faculty members with grievances should first try to resolve them informally with their department chair, the appropriate dean or vice president, or the Provost. They may also go to the ombuds officer for confidential counseling. The ombuds officer is not authorized to conduct formal investigations but may, with the consent of both parties, attempt to mediate an informal resolution to their disagreement.

If an informal resolution is not possible, the University Statutes provide for an internal grievance procedure conducted by the University Senate Faculty Affairs Committee, designed to provide a straightforward and independent review of a faculty member's complaint, without the time, expense, and conflict of litigation.

The mandate of the Faculty Affairs Committee in the Senate By-laws covers a broad range of faculty activities:

[The Faculty Affairs Committee] shall have jurisdiction of all matters relating to terms and conditions of academic employment including, but not limited to, tenure and academic freedom, academic advancement, sabbatical and other leaves, faculty conduct and discipline, retirement, faculty housing, and other faculty perquisites.... [The Committee], or one of its subcommittees, shall also sit as board of appeal on faculty grievances. When acting in such judicial capacity, the Committee, or its subcommittee, shall function in a confidential manner and shall not be required to report its deliberations to the Senate.... (Senate By-laws Section 3, (h) (5)).

Grievances can be about any of these aspects of the faculty experience, but the bulk of the committee's work involves complaints about promotion (to tenure or some other station in the faculty hierarchy) or the renewal of appointments, including those of long-term non-tenure-track faculty. In such cases the committee focuses on allegations of violations of academic freedom or of defective procedure (including the failure of a department or school to follow its own rules). In matters of appointments, the committee also considers complaints of discrimination based on race, ethnicity, sex, sexual orientation or any of the

other categories enumerated in the University's Non-Discrimination Policy. It may also consider a complaint that a review gave insufficient attention to the candidate's teaching.

Faculty Affairs does not address complaints about judgments made by designated review committees on the merits of a candidate's scholarship or publications. The committee also has no power to, for example, reverse or overturn the outcome of an appointment review. If the Faculty Affairs Committee finds for a grievant, its recommendation typically takes the form of a request for a "do-over"--another review, with better procedures and oversight.

An overview of grievance procedures. A faculty member who may want to make a complaint to the Faculty Affairs Committee usually begins by contacting either the committee co-chairs or Senate staff, whose contact information is available on the Senate website. The co-chairs speak informally with the prospective grievant to decide whether the case merits a full grievance investigation. They sometimes make their own efforts at informal mediation at the outset.

If the chairs see the need for a grievance inquiry, they recommend this course to the committee. If the committee decides to go forward, it forms a subcommittee. The first step in the investigation is typically an interview with the grievant, who supplies a written complaint beforehand. This statement can be in plain language, and may be revised over the course of the investigation.

Barring extraordinary circumstances, the subcommittee will complete its investigation within 60 working days (excluding weekends, university holidays, and the period between Commencement and Labor Day) of the receipt of this written complaint. During that time the subcommittee reads documents and interviews witnesses, including relevant administrators. The subcommittee then reports its findings and recommendations to the full Faculty Affairs Committee. Once the committee has approved a final version of the report, it goes to the Provost, with copies to other administrators concerned and to the grievant. The Provost responds in writing to the committee's recommendations. There may be further discussion between the committee chair(s) and the Provost at this point, but the Provost decides.

The committee takes the confidentiality of its grievance deliberations and documents seriously. It has also understood that there is no guarantee that these proceedings will not be discoverable in the course of later litigation. To the knowledge of anyone now involved with the committee, no grievance documents have ever been subpoenaed or released. On rare occasions a committee member has been deposed in a lawsuit.

As indicated in the Senate By-laws, the committee is not required to report its deliberations to the Senate as a whole, and in most cases details of a particular grievance are shared only within the committee and among the recipients of the grievance report. However, the Senate By-laws allow the committee, "with the consent, or at the request of the petitioner...[to] make public its recommendations and reasons therefor." Public discussion of grievances has occurred very rarely, though in some cases Faculty Affairs has

reported to the Senate on the policy implications of significant grievances, without divulging identities or other specific information.

To the extent possible, Faculty Affairs grievances proceed in a collegial, peer-to-peer, and somewhat informal way, in marked contrast to litigation, in which the complainant and the university are both actively represented by lawyers in formal proceedings that may end up in court. These two processes cannot occur at the same time. A grievant may decide to sue the university at any stage of a grievance, but must immediately notify the committee, which will close its investigation.

This restriction is not, however, a general ban on contact with lawyers. Faculty Affairs will consider the complaint of a faculty member who has sought legal advice, but lawyers play no active role in a Faculty Affairs Committee grievance investigation. A grievant is always free to pursue litigation after the conclusion of a grievance investigation.

Tenure grievances. Complaints about the denial of tenure have a number of particular rules and procedures, which follow:

--Grievants must submit their complaint to Faculty Affairs within 90 working days after being informed of the decision. "Working days" exclude Saturdays, Sundays, University holidays, and the period between Commencement and Labor Day.

--If the committee decides to investigate, it must submit its report to the Provost within 60 working days of receiving the complaint. The Provost may grant extensions of that deadline in unusual circumstances.

--Faculty who file a grievance about the denial of tenure at the University level by the Tenure Review Advisory Committee are entitled only to the additional time of appointment specified in their letter of non-renewal. However, when a grievant is in the final permissible year of counted service, the Provost may, at his or her discretion, authorize a one-year extension if it is necessary to permit the Faculty Affairs Committee to complete its investigation. Reappointment in this case does not confer tenure.

--To fulfill the provision in the Statutes for access to confidential information relevant to tenure grievances (Section 73b), while keeping the disclosure of such information to a minimum, the Faculty Affairs Committee and the Provost have agreed upon the following procedures:

- Upon accepting a grievance, the committee provides the Provost with a copy of the faculty member's written complaint.
- The committee establishes an investigating subcommittee consisting exclusively of tenured faculty. Generally, the subcommittee is drawn from the Committee membership.
- The investigating subcommittee provides the Provost with a list of questions outlining information it requires. Within 15 working days of receiving the list, the Provost, and

when appropriate, the Vice Provost who administers the tenure review system at the university level, meets with the subcommittee to answer these and any other questions it may have about the grievance. Exceptions to this deadline are made only when the Provost or Vice Provost are not physically at the University for an extended period of time.

- While the subcommittee is not given confidential documents, the Provost and Vice Provost will confirm whether such documents exist and describe their contents if the subcommittee needs this information to complete its investigation. They also will provide the subcommittee with other confidential information relevant to the grievance.
- If the subcommittee needs clarification or further information after its initial interview, it may ask for further meetings with the Provost and/or the Vice Provost.
- The subcommittee only interviews the Provost and Vice Provost. It does not speak with members of the Tenure Review Advisory Committee (TRAC), the witnesses who testified before the committee, or any other individuals who attended the grievant's tenure review.

Upon completing its investigation, the subcommittee submits a report to the tenured members of the Faculty Affairs Committee meeting in executive session, who will act for the full committee.

The Faculty Affairs Committee's review of a grievance over a tenure decision must follow the rules of confidentiality that govern the work of TRAC. The investigating subcommittee shares confidential information it has acquired with other tenured members of the Faculty Affairs Committee only to the extent necessary to permit them to make an informed decision on the grievance. No one other than the tenured members of the committee is given access to this information, including the grievant, who will, however, receive the committee's final report to the Provost.

The Faculty Affairs Committee will also follow these procedures in the case of grievances over tenure decisions in the School of Law, where the tenured faculty serve as the equivalent of the TRAC. The investigating subcommittee may, at its discretion, interview the dean and the appropriate member of the dean's staff. Those individuals will cooperate with the subcommittee in the same manner as the Provost and Vice Provost in the case of grievances over TRAC decisions.

Responsibility for investigating grievances concerning the denial of tenure, other than those arising from TRAC reviews or their Law School equivalent, is also assigned to a subcommittee consisting of tenured faculty. The Faculty Affairs Committee follows similar procedures in the case of grievances over the failure to reappoint in a non-tenured rank, except that the investigating subcommittee may include non-tenured faculty and its report is reviewed by the full membership of the Committee.

Other Senate roles involving faculty rights and responsibilities. The University Statutes assign other functions to the Senate involving faculty rights and responsibilities. In Section 22c, under Duties, the Senate is charged “to consider any questions that may arise as to the conduct or efficiency of any officer of administration or instruction, and to report thereon to the Trustees through the President.” The Faculty Affairs Committee has carried out this function on rare occasions.

In the early 1970s the Faculty Affairs Committee produced the Code of Academic Freedom and Tenure, which the Senate adopted and the Trustees approved as chapter 7 of the University Statutes. The Code, in Section 75, lays out a detailed dismissal procedure, based on a tribunal of senior faculty, to hear charges of grave misconduct that may lead to termination for tenured and non-tenured professors. Section 75 assigns responsibility for appointing the members of the faculty tribunal, as well as for administering other features of this judicial enterprise, to the Faculty Affairs Committee. The tribunal is also designed to serve as an appellate body in unresolved tenure and other appointment-related grievances in which the committee sees substantial grounds for believing that discrimination or a violation of academic freedom has occurred.

This trial procedure set forth in Section 75 has been initiated on rare occasions since it was codified, but never carried out to completion, as far as anyone now involved in the work of the committee knows.