

## Professional Concerns Committee

### Minutes for December 2, 2021

#### Virtual Meeting (on Zoom Conferencing Software), 3:30 pm

**Members in Attendance:** S. Alexander, R. Boyce, W. Darnell, K. Fuegen, B. Green, P. Hare, G. Hatchett, J. Herman, K. Katkin, A. Miller, K. Munte, M. Nakamura, G. Newell, M. Providenti, H. Riffe, G. Sun, J. Washburn-Moses, M. Washington

**Guests in Attendance:** J. Bloch, M. Cecil, G. Hiles

**Members Not in Attendance:** T. Cata, L. Dynan, R. Gall, N. Grant, B. Karrick

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#### 1. Call to Order, Adoption of the Agenda

- a) The meeting was called to order at 3:31pm. The agenda was adopted unanimously without changes.

#### 2. Approval of the minutes from the November 18 meeting

- a) Draft minutes from the November 18 meeting were approved without dissent.

#### 3. Chair's Report and Announcements

- a) Senate Report:

- i. Hybrid University

– Provost Cecil reported that we are starting from a position of strength. NKU is an institution that provides primarily an on-campus education. We are not an online only institution. There are no plans to move to an online only institution. There are no plans to implement a high flex model across campus because it would give students an excuse to stay at home and not come to campus. The focus of the conversation is how we can reach additional audiences and improve the delivery of services.

-- Senate President John Farrar said conversations are ongoing among working groups tasked with looking at what a hybrid university might look like.

- ii. Advising Hub for first year students:

-- Provost Cecil said 10 new advisors would be hired in January in a cluster hire. Salaries for existing advisors already at NKU will increase.

- iii. Upcoming agenda for Faculty Senate:

-- Senate President John Farrar provided a look ahead to the spring agenda including the Moonshot Initiative, Success by Design, and ways to improve program review. There was an ad hoc working group last summer that was looking at ways to review academic programs. In the spring the intent is to include more faculty in discussions regarding what the criteria should look like for the evaluation of academic programs.

- iv. General Education:
  - Some faculty would like to see 300 level courses included in Gen Ed. Right now they are not. This is a controversial issue which will come to Senate in the spring for discussion.
- v. Faculty Senate Constitution:
  - A draft revision of the Senate Constitution will be coming to PCC in the spring. This draft would alter the timing of elections for senators and potentially the faculty advocate. Currently, the constitution says new senators would be elected in the fall but would not begin to serve until the following summer. The faculty advocate is elected at a different time as the committee chairs. The draft language alters the time when senators are elected and have the faculty advocate elected at the same time as chairs. Expect PCC to be looking at that part of the Senate Constitution.
- vi. Teaching Effectiveness and Enhancement Committee (TEEC) Chair Chris Lawrence spoke about NKU interviewing new providers of student evaluation of instruction software. He has asked those providers if they have mechanisms whereby certain student comments that are discriminatory, harassing, or irrelevant to instruction could be redacted. One company can do that but they cannot also redact the corresponding numerical ratings. This would remove the context for an inflammatory rating.
  - Holly Riffe's PCC subcommittee will be looking at this question over the next several weeks. The subcommittee will talk about the feasibility of NKU developing a procedure that would allow faculty to request that certain comments be removed from student ratings of instruction.
- vii. President Vaidya
  - He did not attend the Senate meeting. He was waiting to catch a plane.
  - He has announced that all current employees that have been hired prior to since January 4, 2021 will receive a 1% bonus. Minimum \$500, maximum \$1000.
  - He also announced a parental leave benefit that will go into effect in February 2022. Full time employees with 12 months of consecutive service as of February 1 will be eligible for 6 weeks of paid leave. Note: NKU does not yet have a formal policy and when there is, PCC will review it. Charlisa Daniels (Benefits Chair) is currently working with Human Resources to develop a policy. The president's paid leave is an interim measure until the formal policy is in place.
- viii. Senate discussed 2 issues approved by PCC.
  - 1. Replacing language in Appendix A of the Handbook regarding administrators returning to faculty status. No controversy regarding the proposed change.

2. Changes to section 5 of the Handbook, concerning the promotion process in which we replaced the word “continuing” with “continued.” Again, no controversy.
- ix. Upcoming Senate meeting:
  - Senate meets on December 17, 2021 and will vote on the recommendation to update Appendix A and section 5 of the Handbook.
- x. Next PCC meeting: We will meet January 20, 2022. The website says we will meet in person in the UC Ballroom but this is up in the air. If we do meet in person we will have a Zoom option. However, we may meet exclusively on Zoom.

#### 4. Old Business

##### a) Discussion Item: Grievances (Handbook section 14)

###### **Background:**

We are revising section 14 for minor and major reasons. Minor updates are needed since it has not been updated in a long time (e.g., grievant needs to turn in 8 papers copies – we can replace this with electronic communication). The need for major revisions became apparent last spring when a grievant brought forth issues about how this policy is interpreted:

- who can file (only one person or multiple people);
- conflict of interest (what if a school director or department chair is named in the grievance – should this change how and to whom the petition is delivered?);
- many issues deal with RPT but other non RPT issues can also be grieved as well (do we need to stipulate that an RPT committee be involved? State an RPT chair receives a copy of the grievance only in issues related to RPT?).

How does the current policy fall short? Who files – any faculty member can file a grievance. Do we want to enable multiple faculty members to file a joint grievance? For example, multiple members of a department share concerns of abuse or retaliation about a school director or department chair, or if a director or chair makes unilateral decisions without consulting the faculty, should these concerns be heard by a peer review committee?

Currently there are a couple avenues: major issues concerning a faculty member’s appointment are heard by a peer review committee. For all others, there is a complaint process. Should matters that concern a school director or department chair be heard by a peer review committee or should these matters be treated as complaints for purposes of our grievance process?

PCC members who have experience to share in this area include H. Riffe and R. Boyce who have served on peer review committees. A. Miller has had experience on an RPT committee during which a faculty member filed a grievance.

What matters (outside RPT) should be subject to peer review and how could we

clarify which matters would be heard by peer review committees and which matters are to be treated as complaints?

**Discussion:**

-- The process is not clear – even members of the Complaint Advisory Committee struggle to determine where a faculty member in the process would go. Even for a faculty member who has served on Appeals and Hearing Committees, it is not clear how this works.

-- K. Fuegen: PCC will probably will need to look at the Peer Review and Complaint processes at the same time to understand what should go where. (Screen share of complaint process, Handbook 14.3).

-- If there is a problem with a department chair or director (e.g. bad, incompetent, disrespectful) and a complaint is filed to a peer review committee, what could be the complaint committee's recommendation? (Usually a complaint concerns a specific decision that could be reversed).

-- Support offered for the current structure where individual job-related grievances that have specific resolutions can have the formal process of a peer review panel. Other kinds of grievances can be settled informally through the complaint process. What would happen if the complaint was that the director was disrespectful or did things not in the interest of the faculty or the school, but not a specific thing that would require specific fact-finding and that could be reversed? That might be more suited for the complaint process or the upstream review process. The upstream review process could be used by upper admins – if a large number of people thought an admin needed to be removed, that might have more impact.

-- K. Fuegen: We need to speak explicitly about the role of the Faculty Advocate. This section of the Handbook was written well before the Faculty Advocate position was created.

-- It would be good to mention the Faculty Advocate as one of the informal means to resolve a complaint when a faculty member has a complaint concerning an administrator.

-- In theory, resolving a complaint through the Faculty Advocate sounds good, but it hasn't worked yet. When a complaint is not an RPT matter, it goes back to the dean. The dean could ignore the recommendation of the peer review committee. Unless it is an RPT decision, the process fails.

-- If a chair is named in a complaint, for instance, as incompetent, that complaint can go to the dean. Could the peer review committee recommend the chair be removed? What could the committee actually recommend?

-- A complaint advisory committee wouldn't recommend anything as large as the removal of a chair. In more specific cases with the possibility of a specific resolution, a decision of the complaint advisory committee may not be binding on a dean but the provost could see that and suggest the dean follow the decision. This can happen for smaller, concrete matters where a decision can simply be reversed. There isn't a need for greater formality in that process.

- K. Fuegen: Is it clear whether a grievant should file a petition with the peer review committees or lodge a complaint? 14.2 – peer review committees. 14.3 – complaint process. 14.2 deals with a faculty member’s professional development, 14.3 deals with all other issues. Handbook section 8, on APR, has an appeals procedure for dealing with things we disagree with written into the APR document. This section says that “A faculty member convinced that misevaluation is damaging his/her professional status or advancement may pursue one of the complaint processes...” (Handbook, Section 8.4 “Appeal Procedures”). How would a complainant know which process to follow?
- This question articulates the role of Faculty Advocate as someone who can help others navigate this process. The Faculty Advocate would be aware of patterns of complaints that could potentially lead to exploring larger issues.
- The role of Faculty Advocate role needs to be defined in the Handbook. (mentioned twice)
- K. Fuegen: Should faculty be able to jointly file a grievance?
- No for grievance but yes for complaint. Grievances are better for individual personnel disputes, like RPT, where formal fact-finding is involved. General problems with administrators is more suited for complaints.
- K. Fuegen: In 14.2, RPT matters are not the only matters subject to peer review. Also included: alleged discrimination, professional ethics and responsibility, termination, program reduction, reassignment, disagreement with post-tenure review. Violation of professional ethics and responsibilities or program reduction could lead to a joint grievance.
- Opinion above (“no for grievance”) reversed, now yes for grievance. It might be useful to think in terms of the legal concepts of standing (you can’t file a complaint because of something that happened to someone else) and class action (more than one person is actually injured), for example, in the case of program reduction. Suggested language “Individuals who suffered an individual adverse action could bring a complaint either individually or jointly.”
- Do we need a separate section for collective complaints against administrators? In many of these cases, people are seeking a personnel change.
- What if we had different names for the different processes to better suggest which to use? What if we separate the items listed in Handbook 14.2 into separate sections for clarity?
- K. Fuegen: Who constitutes a peer? Only tenured faculty members can serve on these committees. What if the grievant is non-tenure track?
- Part of having tenure is being able to speak out for those without protections of tenure.
- Analogy to law – federal judges have life tenure, that gives them the independence to be fair. Tenured faculty have institutional memory and familiarity with policies.
- NTTRs are sometimes in conflict with tenured faculty. Can NTTRs trust a panel of only tenured faculty to adjudicate issues between NTTRs and tenured faculty?
- Could we add at-large NTTR people to these committees?

- The committees are not blind – everyone meets before the committee.
- Not every committee member serves on every hearing. Complainants don't know who is on the appeals committee until a decision is rendered whether there is a prima facie case or not.
- Can the complainant have an advocate present during a hearing? Even if a complainant brings an attorney, the attorney cannot speak within the hearing (they could whisper advice to the complainant).
- This is a scary, onerous process. There are 18 steps and the process is confusing.
- K. Fuegen: PCC's challenge is to make this process less confusing.
- We could reduce the scope of peer review. Things like RPT disputes or program elimination are only applicable to tenure track faculty. Peer review committees could be limited to adverse job actions. Other things could go through more informal processes that could include non-tenure track faculty.
- A lot happens behind the scene that prevent things getting to peer-review: settlement, lawsuit, threatened lawsuit. This is another burden on faculty who just need a safe working environment.

**Action:**

- Discussion will continue in January 2022. In the meantime K. Fuegen will discuss this with the Faculty Advocate regarding his view on working with faculty going through this process.

**5. Adjournment**

- a) The meeting adjourned at 4:30pm.

Submitted,  
M. Providenti, Secretary

## 14. GRIEVANCES

### 14.1. DEFINITION

For the purposes of this Handbook, there are two categories of grievances:

- Major issues concerning a faculty member’s professional appointment that are heard by the peer review committees (Section 14.2 below), and
- All others (see Section 14.3 below, Complaint Process)

### 14.2. PEER REVIEW PROCESS

The Peer Review Process is confidential except as agreed to by the grievant faculty member and the University, through its appointed representatives, or as provided herein, or as may be required in a court of law.

#### 14.2.1. MATTERS SUBJECT TO PEER REVIEW

Only the following matters, all of which affect a faculty member’s professional employment at the University, may be appealed to or heard by the Peer Review Process:

- Denial of reappointment, promotion or tenure;
- Cases involving alleged illegal discrimination, except for cases of alleged sexual discrimination which are covered in Section 16.8, Sexual Harassment/Gender Discrimination, of this Handbook;
- Cases involving alleged violation of professional ethics and responsibilities, as set forth in Section 16.3, Professional Ethics and Responsibilities, in this Handbook;
- Termination for medical reasons, as set forth in Section 10.5, Termination for Medical Reasons, in this Handbook;
- Program reduction and faculty reassignment, as set forth in Section 10.6 in this Handbook;
- Termination for cause, as set forth in Section 10.8, Termination For Cause, in this Handbook; and
- Cases involving disagreement with a post-tenure review development plan, as set forth in Section 9.6.4 in this Handbook.

The Peer Review Process will deal with appeals and grievances of matters listed above only for persons who receive a faculty contract; no person who receives an administrative contract (e.g. director, dean, associate provost, vice president) may utilize the Peer Review Process. Section 14.3, Complaint Process, applies to all other complaints, grievances and appeals by faculty members.

#### 14.2.2. COMPOSITION OF PEER REVIEW COMMITTEES

##### 14.2.2.1. MEMBERSHIP OF THE COMMITTEES

There shall be two peer review committees. The Peer Review Advisory Committee shall consist of five members and five alternate members. The Peer Review Hearing Committee shall consist of five members and five alternate members. Alternate members of either Peer Review Committee may be called upon to serve on the other Peer Review Committee; however, no alternate can serve on both Committees to hear the same case. If it is necessary to constitute a full committee, the Faculty Senate Executive Committee shall appoint members to serve until elected members replace them. Members will serve four-year terms beginning on July 1 of the initial year and extending through June 30 of the final year of service. If a

Commented [KF1]: Does this list encompass all matters that ought to be subject to peer review? Are there any matters that ought to be added?

Commented [KF2]: Committees

Commented [KF3]: 16.2

Commented [KF4]: Do we want to clarify that this policy applies to tenure-track and non-tenure-track faculty? Full-time and part-time faculty?

From the Handbook preface: “This Faculty Handbook is intended to define the rights and obligations of the Northern Kentucky University administration and faculty members.”

hearing is in progress, Committee members are required to continue their service beyond June 30 of the final year until the hearing is concluded.

#### 14.2.2.2. ELECTION OF THE COMMITTEE MEMBERS

The members of the Peer Review Committees will be elected at large by the full-time faculty of the University eligible to vote for Faculty Senators. The election shall be conducted by the Faculty Senate Elections Committee. Nominations shall be sought from all full-time faculty eligible to vote for Faculty Senators. Persons holding full-time administrative appointments, as defined in Section 1.8.1, are not eligible to serve on the peer review committees.

Elections will be held according to the schedule of elections developed by the Elections Committee of the Faculty Senate. Members shall be elected by frequency of votes. In event of a tie, the matter will be settled by the Elections Committee, with the advice and consent of the affected individuals and the President of the Faculty Senate. Membership on the Peer Review Committees should be from a broad representation of the University faculty; therefore, no Department or School will be represented by more than one faculty member on each Committee.

#### 14.2.2.3. TERMS OF THE COMMITTEE MEMBERS

Members of the Peer Review Committees must be tenured full-time faculty. They shall serve staggered four-year terms (1 July to 30 June) to provide continuity of membership. The alternates will serve two-year terms (1 July to 30 June).

#### 14.2.2.4. CHAIRS OF THE COMMITTEES

Each committee will elect a chair who shall serve for one year.

#### 14.2.2.5. CONFLICT OF INTEREST

No member of either Peer Review Committee shall serve in the appeal or review of any matter arising from the department(s) or school of his/her appointment, in any case in which the member participated prior to referral to the Peer Review Committee on which the member participates, nor in any matter in which the member may legitimately be called as a witness. It is the responsibility of committee members to exclude themselves from participating on a committee in any proceeding in which they have a real or apparent ~~by other~~ conflict of interest. Prior to filing a petition, the grievant shall be given the opportunity to object in writing to the presence of any member of the Peer Review committees, based on conflict of interest. If the member does not recuse him- or herself, this fact shall be noted in the committee's report.

### 14.2.3. PROCEDURE

#### 14.2.3.1. FILING THE PETITION

**Commented [KF5]:** It might be argued that a peer review committee comprised entirely of tenured faculty is not a committee of one's peers, if the grievant is non-tenure track. Do we need to clarify that peers are faculty, regardless of tenure status?

**Commented [KF6]:** Added to clarify who may serve. Section 1.8.1: "Full-time administrators with academic rank are members of the University administration who hold faculty rank in probationary or tenured positions. Such persons may be assigned teaching responsibilities. This provision is intended to encompass high-level administrators, e.g. the President, vice presidents, deans, and other similarly situated persons."

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**Commented [KF7]:** Should department chairs or school directors be eligible to serve on the committee, provided that they are in a different department/school than the grievant?

**Commented [KF8]:** Do we need to define conflict of interest? COI is defined in the research misconduct policy as follows: A conflict of interest may include, but is not limited to, co-authorship on a paper or book a professional or personal relationship, professional or personal relationship or antagonism, financial ties, or contact regarding possible employment with either the respondent or the complainant.

**Commented [KF9]:** Adapted from 16.7.4.3: formal investigation of research misconduct



Any faculty member wishing to initiate a review by the Peer Review Process must file with the provost one original and eight copies of a written petition. The provost shall retain the original and the eight copies should be sent to:

Commented [KF10]: Specify that electronic version is acceptable.

- Copies 1 – 5 shall go to the Chair of the Peer Review Advisory Committee,
- Copy 6 shall go to the dean of the college in which the faculty member resides,
- Copy 7 shall go to the department chair/school director in which the faculty member resides,
- Copy 8 shall go to either the chair of the Reappointment, Promotion and Tenure committee in the department or school in which the faculty member resides or other respondents to the grievance.

Commented [KF11]: Only relevant if the grievance pertains to tenure, promotion or reappointment; otherwise, send a copy to other respondents to the grievance

The petition must:

- Clearly state the nature of the grievances and any/all attempts that the faculty member has made to resolve the grievance(s); only those grievances listed in Section 14.2.1 of the Handbook can be investigated by the Peer Review Committees.
  - If the faculty member wishes to submit supporting documentation, one original and eight copies of the documentation must be included with the copies of the written petition to the provost. Although decisions regarding the inclusion of supporting documentation are the sole responsibility of the faculty member, the Peer Review Committees discourage the submission of documents unrelated to the specific grievance(s).
- Be filed within the time limits prescribed by the applicable section of this Handbook; for reappointment, promotion, and/or tenure decisions the time limit is fifteen (15) University working days of receipt of the notice from the provost (Section 3.2.134); if no time limit is prescribed elsewhere in this Handbook, the petition must be filed no later than 60 days of the date of the alleged grievous conduct; if a petition is filed after the prescribed time, it shall be dismissed.

Commented [AM12]: Indented

#### 14.2.3.2. WITHDRAWING THE PETITION

An aggrieved faculty member may withdraw a petition for Peer Review at any time prior to the completion of the Peer Review Process. The faculty member must file a written request with the provost asking that the petition be withdrawn. Withdrawal of the petition shall be effective on the date the written request is received in the office of the provost and all further consideration of the petition shall cease immediately.

#### 14.2.4. PEER REVIEW ADVISORY COMMITTEE

##### 14.2.4.1. INITIATING THE PROCESS

Within five (5) working days of receipt of a timely filed petition and any supporting documentation, the provost shall forward copies of the petition and any supporting documentation received from the faculty member to the Chair of the Peer Review Advisory Committee, the dean of the college in which the aggrieved faculty member resides, the department chair/school director, the chair of the Reappointment, Promotion and Tenure Committee of the grievant faculty member's department/school, and/or any other legitimate respondent to the grievance.

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Within five (5) working days of receipt of a filed petition, the provost shall forward the copies of the petition and any supporting documentation received from the faculty member to:

- the dean of the college in which the faculty member resides,
- the department chair/school director,
- if the grievance is pertaining to tenure, promotion or reappointment, the chair of the Reappointment, Promotion and Tenure Committee
- and/or other respondents to the grievance.

The chair of the Peer Review Advisory Committee will provide each Advisory Committee member with copies of all correspondence.

#### 14.2.4.2. THE COMMITTEE PROCESS

Upon receipt of a petition and any supporting documentation for peer review, the dean of the college in which the faculty member resides, the department chair/school director, the chair of the Reappointment, Promotion and Tenure Committee, and/or other respondents may each file a written response to the petition, including supporting evidence, with the Peer Review Advisory Committee within ten (10) University working days of receipt of the faculty member's documentation. Any respondent filing a written response to the petition shall provide the grievant with a copy of said response. The grievant faculty member may respond in writing within ten (10) University working days of receipt of the response(s) from the dean, department chair/school director, chair of the Reappointment, Promotion and Tenure Committee, and/or other respondents. The chair of the Peer Review Advisory Committee will notify, in writing, all the parties described above of their right to submit a response and will provide each Advisory Committee member with copies of all correspondence.

Normally the Peer Review Advisory Committee will meet no more than ten (10) University working days after receipt by the committee's chair of the petition and all of the responses described in the previous paragraph.

Within ten (10) University working days of receipt of the faculty member's documentation from the provost, those noted below have a right to submit a written response to the petition and to include supporting evidence. The written response should be sent to the provost within 10 University working days of receipt of the faculty member's documentation

1. the dean of the college in which the faculty member resides,
2. the department chair/school director,
3. if the grievance is pertaining to tenure, promotion or reappointment, the chair of the Reappointment, Promotion and Tenure Committee
4. and/or other respondents to the grievance.

Within ten (10) University working days of receipt of the above noted responses, the grievant faculty member may respond in writing.

No more than ten (10) University working days following the above noted responses, the chair of the Peer Review Advisory Committee will convene the meeting of the committee.

The chair of the Peer Review Advisory Committee will convene the meeting of the committee. A quorum of the committee shall consist of four of the five members. Alternate members may be used as necessary. Based upon the written information it has received, the committee members will determine whether a *prima facie* case for a hearing by the Peer Review Committee is presented. All committee members present shall vote. The committee's determination shall be conveyed in writing to the petitioning faculty

**Commented [KF14]:** If the grievant files the petition electronically (proposed change to 14.2.3.1), there is no need for the provost to forward copies to these parties. The parties will already have the petition.

**Commented [KF15]:** If the grievance does not pertain to tenure, promotion, or reappointment, then other respondents to the grievance

**Commented [AM16]:** Delete reordered with some additions

**Commented [KF17]:** Replace with "petition"

**Commented [KF18]:** In the paragraph above, the written response is sent to the Peer Review Advisory Committee.

**Commented [KF19]:** petition

member, to the president of Faculty Senate, and to the provost, all within three university working days of the committee's decision. If the Committee determines that no prima facie case was presented, the petition will be dismissed by the Committee, accompanied by written reasons explaining the committee's decision. If the committee determines that a prima facie case was presented, the case shall be returned to the provost for further action. If there is a tie vote, the grievant faculty member's petition shall be forwarded to the provost for further proceedings with a finding that a prima facie case is presented. The entire committee file and record, including the petition and all copies of written statements and documents, shall be forwarded to the provost. If the petition has been dismissed, there shall be no further peer review proceedings. The provost is responsible for safekeeping the record

**STOP HERE**

**Below is what was drafted in April of 2020. Please read the note on page 4 before moving onto this section.**

A quorum of the committee shall consist of four of the five members. In the case of a conflict of interest, alternate members may be used as necessary. All committee members present shall vote.

Based upon the written information received, the committee members will determine whether a prima facie case for a hearing by the Peer Review Committee is presented.

- If the Committee determines that no prima facie case was presented, the petition will be dismissed by the Committee. If the petition has been dismissed, there shall be no further peer review proceedings.
- If the committee determines that a prima facie case was presented or if there is a tie vote, the case shall be returned to the provost for further action per the procedure set forth in Section 14.2.4.3 Resolution by Negotiation

Within three (3) university working days of the committee's decision, the Committee will notify all parties of their determination in writing.

- the aggrieved faculty member
- the Chair of the Peer Review Advisory Committee,
- the dean of the college in which the aggrieved faculty member resides,
- the department chair/school director,
- and/or any other legitimate respondent to the appeal, including the chair of the Reappointment, Promotion and Tenure Committee if the grievance is pertaining to tenure, promotion or reappointment

The entire committee file and record, including the petition and all copies of written statements and documents, shall be forwarded to the provost. The provost is responsible for safekeeping the record.

#### 14.2.4.3. RESOLUTION BY NEGOTIATION

In the event that the Peer Review Advisory Committee determined that a prima facie case was presented, the provost may review the entire record to determine whether the petition might be resolved by negotiation. The provost may consult with his/her staff, the deans of the University's colleges, and/or

**Commented [AM20]:** I worked on this section, but after reading 14.2.5.3. SCOPE OF REVIEW, 14.2.5.3.1. REAPPOINTMENT, PROMOTION AND/OR TENURE (page 7) I'm not sure that any of this applies to the RPT decision.

My question is this, if the scope of the decision is what is stated in 14.2.5.3.1 then if a prima facie is found, then shouldn't the RPT committee reconvene with the written decision of the committee?

Because if a prima facie is found, then isn't the committee operating outside the boundaries of the policy? Shouldn't the committee be directed to work within the boundaries of the policy?

If so, then it seems the Scope section should be within the committee process and the resolution by negotiation should only be included for the grievances that are not RPT decisions.

**Commented [KF21R20]:** Section 14.2.1 suggests that RPT matters fall under the purview of the peer review advisory committee, though this is not explicit.

**Commented [KF22]:** The chair will be aware of the committee's decision. Should the Faculty Senate president be notified? (See paragraph at bottom of page 4.)

**Commented [KF23]:** Omit "or"

**Commented [KF24]:** If the provost is named in the grievance, s/he has a conflict of interest.

other appropriate persons while making this decision. In that event the entire record may be reviewed by those consulted so that proper advice may be given.

If the provost determines that negotiation might resolve the matter, he/she or his/her designee shall negotiate with the grievant faculty member for the purpose of seeking a mutually agreeable settlement. If such a settlement is reached, it will be reduced to writing and signed by the provost and the faculty member. Such an agreement shall not become binding on either party until approved by the university president and Board of Regents, if required. Approval of the Board of Regents is required only as to matters that the Board of Regents must approve, such as reappointment, promotion and grant of tenure.

Commented [AM25]: Delete, reordered below and some changes/additions

In the event that the Peer Review Advisory Committee determined that a prima facie case was presented, the provost may review the entire record to determine whether the petition might be resolved by negotiation.

Commented [AM26]: Within how many days?

In making this decision, the provost shall consult with all parties below and ensure all parties have a copy of the entire record

- the aggrieved faculty member
- the Chair of the Peer Review Advisory Committee,
- the dean of the college in which the aggrieved faculty member resides,
- the department chair/school director,
- and/or any other legitimate respondent to the appeal, including the chair of the Reappointment, Promotion and Tenure Committee if the grievance is pertaining to tenure, promotion or reappointment

Commented [KF27]: Omit "or"

If the provost determines that negotiation might resolve the matter, he/she or his/her designee shall negotiate with all parties noted above for the purpose of seeking a mutually agreeable settlement.

- If such a settlement is reached, it will be reduced to writing and signed by the provost and the faculty member.
- Upon settlement, the provost shall notify in writing all parties to the grievance.

Commented [KF28]: This represents a departure from existing language: the provost negotiates only with the aggrieved faculty member (see page 5).

Such an agreement shall not become binding on either party until approved by the university president and Board of Regents, if required. Approval of the Board of Regents is required only as to matters that the Board of Regents must approve, such as reappointment, promotion and grant of tenure.

## 14.2.4.3. RESOLUTION BY NEGOTIATION

### 14.2.4.4. NON-RESOLUTION BY NEGOTIATION

If the petition for peer review is resolved by negotiation, there shall be no further peer review proceedings. If negotiation was not pursued by the provost or the matter was not successfully resolved by negotiation, the provost shall expeditiously forward the petition to the chair of the Peer Review Hearing Committee and to the president of Faculty Senate.

### 14.2.5. PEER REVIEW HEARING COMMITTEE

#### 14.2.5.1. REPRESENTATION AT THE HEARING

The provost may designate him/herself, a dean of a college within the University, but not the college in which the grievant faculty member is assigned, or a department chair, but not the chair of the department

in which the grievant faculty member is assigned, to be the University representative before the Peer Review Hearing Committee.

#### **14.2.5.2. TIMING OF THE HEARING**

The Peer Review Hearing Committee shall proceed expeditiously to schedule a hearing and reach a decision.

#### **14.2.5.3. SCOPE OF REVIEW**

##### **14.2.5.3.1. REAPPOINTMENT, PROMOTION AND/OR TENURE**

When hearing a case involving denial of reappointment, promotion and/or tenure, the Peer Review Hearing Committee may receive evidence and consider only the following in order to determine whether or not the faculty member's rights have been violated:

- Whether or not the policies and procedures set forth in Sections 3, Evaluation; 4, Reappointment; 5, Promotion; 6, Tenure and/or 7, Appointment, Reappointment, Promotion, and Tenure for Librarians of this Handbook were correctly followed in reaching a decision affecting the faculty member's professional appointment;
- Whether or not the faculty member received a reasonable opportunity to present his/her side of the matter at issue; and/or
- Whether or not the decision affecting the faculty member's professional appointment was made in a fair and/or reasonable manner, i.e. whether there was some rational basis to support the decision.

##### **14.2.5.3.2. ILLEGAL DISCRIMINATION**

When hearing a case involving alleged illegal discrimination (except cases of alleged sexual harassment/gender discrimination which are covered by different procedures and not within the purview or responsibility of the Hearing Committee), the Hearing Committee shall determine whether there was illegal discrimination which affected the decision from which the appeal is taken, and if there was illegal discrimination, make a recommendation for a remedy.

##### **14.2.5.3.3. VIOLATION OF PROFESSIONAL ETHICS AND RESPONSIBILITIES**

When hearing a case involving alleged violation of professional ethics and responsibilities, the Hearing Committee shall be guided by Section 16.2 of this Handbook. The Hearing Procedures provided below apply.

##### **14.2.5.3.4. TERMINATION FOR CAUSE**

When the Hearing Committee is hearing a case of termination for cause, the Committee shall be guided by Section 10.8, Termination for Cause. The Hearing Procedures provided below are modified in Section 10.8.

#### **14.2.5.3.5. TERMINATION FOR MEDICAL REASONS**

When the Hearing Committee is hearing a case of termination for medical reasons, the Committee shall be guided by Section 10.5, Termination for Medical Reasons. The Hearing Procedures provided below apply.

#### **14.2.5.3.6. PROGRAM REDUCTION AND FACULTY REASSIGNMENT**

When the Hearing Committee is hearing a case of program reduction and faculty reassignment, the Committee shall be guided by Section 10.6, Program Reduction and Faculty Reassignment. The Hearing Procedures provided below apply.

#### **14.2.5.4. HEARING PROCEDURES**

##### **14.2.5.4.1. QUORUM**

A quorum of the committee shall consist of four of the five members. Alternate members may be used as necessary.

##### **14.2.5.4.2. PRIORITY**

Hearings involving non-reappointment or termination shall be given preference over all other cases.

##### **14.2.5.4.3. STATEMENT AND WITNESS LISTS**

The committee must request a written statement of the grievant's case and a written list of witnesses. The University representative must be given an opportunity to respond with a written statement of the University's case and a written list of witnesses. These statements and witness lists must also be exchanged between the grievant and the University representative.

##### **14.2.5.4.4. CLOSED HEARING**

Hearings will be closed unless both the grievant faculty member and the University representative agree to an open hearing. That agreement must be in writing and signed by both the grievant faculty member and the University representative, and will be subject to approval by the provost and the University president.

##### **14.2.5.4.5. ADVISORS**

The grievant faculty member may bring a person, including an attorney, to serve as an advisor. This shall be at the grievant faculty member's expense. If the grievant faculty member intends to bring an advisor, that fact shall be communicated to the Hearing Committee and to the University representative within five university working days of the day on which the grievant faculty member is asked to give the committee a list of witnesses. If the grievant faculty member brings an advisor, the University representative may bring an advisor, including an attorney if the grievant's advisor is an attorney. Neither advisor may

address the Hearing Committee nor question any witness(es); the sole role of the advisor shall be to advise the person to whom they are the advisor.

#### **14.2.5.4.6. FORM AND PROCEDURE**

Hearings shall be non-adversarial in form and procedure. The committee shall seek to learn the truth. The rules of evidence binding upon courts of law are not to be observed; however, the committee shall seek to keep the evidence received pertinent to the issue(s) raised in the proceeding.

#### **14.2.5.4.7. EVIDENCE AND WITNESSES**

The grievant faculty member may present evidence and call witnesses and submit documentation, all of which must be pertinent to the issue(s) raised. Thereafter the University representative may present evidence and call witnesses and submit documentation, all of which must be pertinent to the issue(s) raised. The Committee may call any witness(es) and request any documentation it deems appropriate and pertinent to its investigation. The grievant, the University representative, and the committee shall all be given the opportunity to question each witness before that witness is excused.

#### **14.2.5.4.8. HEARING TRANSCRIPT**

A complete transcript of the hearing shall be made, including all written documents submitted by any person or witness. The transcript shall be reduced to writing.

#### **14.2.5.5. DECISION OF THE COMMITTEE**

Following completion of the hearing and upon receipt of the complete transcript, the Peer Review Hearing Committee shall promptly meet to deliberate and reach a decision. The decision shall be determined, following discussion, by simple majority vote, which may be by secret ballot, including the vote of the committee chair. A tie vote must be reconsidered. In the event the final committee vote is a tie vote, the grievant faculty member's petition shall be dismissed. The committee may make the recommendation(s) it deems appropriate, within the scope of its charge as stated above. The decision and recommendations shall be in writing. The decision and recommendation(s) must be based upon written findings of fact, which may be a separate document or included in the decision and recommendation(s).

#### **14.2.5.6. COMMITTEE REPORT**

The Peer Review Hearing Committee's written findings of fact, decision and recommendation(s) shall be delivered to the University president, to the president of Faculty Senate, and to the grievant faculty member within five (5) University working days of reaching its decision. The University president and faculty member shall each receive a copy of the complete transcript of the hearing, including all documents received in evidence.

#### **14.2.5.7. PRESIDENT'S DECISION**

If the matter does not have to be presented to the Board of Regents for a decision, then upon receipt of the written findings of fact, decision and recommendation(s) of the Peer Review Hearing Committee, the president shall make a decision. If the matter requires action by the Board of Regents, the president shall formulate a recommendation to the Board of Regents. In doing so, the President may consult with the provost and with the deans of the University's colleges, and in that event the provost and the deans may

have access to the complete transcript, documents received in evidence, and to the written findings of fact, decision and recommendation(s). The president shall communicate his/her decision or recommendation to the grievant faculty member, to the provost and to the Board of Regents.

#### **14.2.5.8. BOARD OF REGENTS' DECISION**

If the decision must be made by the Board of Regents, the president shall forward his/her recommendation and all previous recommendations pertaining to the hearing to the Board of Regents for final action. The Board of Regents shall deliberate the case and reach its decision. The Board of Regents shall communicate its decision to the president, the provost and to the faculty member, which may be through the president. The president shall implement the Board's decision.

#### **14.2.5.9. COMMUNICATION**

In the event that the case provides instruction to any aspect of the University and its procedures, the president may provide a means for that instruction to be communicated to appropriate persons, with confidentiality of the Peer Review Process otherwise maintained.

#### **14.2.5.10. KEEPING OF THE RECORD**

The President is responsible for safekeeping the record.

### **14.3.**

#### **COMPLAINT PROCESS**

The following process will apply to all complaints other than those heard by the peer review committees and those not covered elsewhere in this Handbook.

##### **14.3.1. PROCESS APPLICABILITY**

A faculty member initiates the complaint process when a concern can no longer be resolved through informal discussion and is not governed by the peer review process.

##### **14.3.2. COMPLAINT PROCESS PROCEDURE**

The faculty member addresses the complaint in writing to his/her department chair, with copies to the appropriate dean and the provost. The complaint should identify clearly the nature of the concern and record any earlier attempts to resolve the complaint through discussion.

If the matter remains unresolved at the chair's level, the faculty member may address the complaint in writing to the appropriate dean with copies to the provost and the department chair.

If the matter remains unresolved at the dean's level, the faculty member may address the complaint in writing to the provost with copies to the department chair and the dean.

The provost or an associate or vice provost assigned at the provost's discretion will provide oversight throughout the complaint process and will ensure that careful consideration is given to the complaint at every level without prejudice to the complainant.



The department chair, the dean, and the provost are required to respond to the complainant in writing.

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### 14.3.3. COMPLAINT ADVISORY COMMITTEE

Each college shall elect one at-large member to serve on the Complaint Advisory Committee. The members shall serve staggered two-year terms. This election will be conducted by the Faculty Senate at the time of other Faculty Senate elections. Members of the Complaint Advisory Committee will be full-time tenured faculty.

The vice president of the Faculty Senate shall be responsible for calling the first meeting of the Committee, which will then choose a chair from among its elected members. The vice president of the Faculty Senate will also act as an alternate member of the Complaint Advisory Committee should one be needed because of illness or conflict of interest. The Complaint Advisory Committee may be called on to review any complaint and make recommendations to either the department chair or the dean during the procedure outlined in Section 14.3.2, above. If the complaint is addressed in writing to the provost, the provost is required to consult the Complaint Advisory Committee, which will then make recommendations in writing to the provost for resolution of the complaint. The provost and the Complaint Advisory Committee will work as expeditiously as possible to resolve the complaint promptly. The Complaint Advisory Committee shall be provided copies of the written complaint, all written correspondences of the administrator(s) and the complainant, and if the Committee considers it necessary, it may meet with the complainant and others mentioned in the complaint. The complainant and the vice president of Faculty Senate shall also receive a copy of the Complaint Advisory Committee's recommendations.

A member of the Complaint Advisory Committee may not hear a complaint if he/she is from the same department as the complainant. In this event, the vice president of the Faculty Senate will serve as alternate.