



A RESOLUTION TO AMEND THE *FACULTY CODE* (7) (19/8)

WHEREAS, the Faculty Code employs a system of multiple reviews at multiple levels, including department-, school-, and university-wide faculty panels and by both school- and university-wide administrators, all of which are designed to reduce the possibility of arbitrary or capricious decision-making associated with denials of tenure or promotion;

WHEREAS, the 2015 *Faculty Code* provides that an unsuccessful candidate for tenure or promotion can file a grievance to challenge a negative result as “arbitrary and capricious;”

WHEREAS, the present grievance process for challenging “arbitrary and capricious” denials of applications for tenure or promotion is cumbersome and time-consuming and can extend past the termination date for a candidate’s employment with the university;

WHEREAS, in cases involving nonconcurrences with faculty recommendations in favor of tenure or promotion, a claim by the candidate that the Provost’s decision to deny tenure or promotion is “arbitrary and capricious” should be reviewed by the Faculty Senate Executive Committee instead of through the grievance process;

WHEREAS, the process for the Executive Committee’s review should (1) permit the candidate to provide a written statement to the Executive Committee supporting the candidate’s “arbitrary and capricious” claim, (2) authorize the Executive Committee to state its opinion on the question of whether the Provost’s decision is “arbitrary and capricious,” (3) direct the Executive Committee to provide its opinion to the Provost, and (4) unless the Provost’s decision is changed to a decision in favor of tenure or promotion, authorize the Executive Committee to provide its opinion to the recommending faculty unit, the applicable School-Wide Personnel Committee, and the Dean, and to send a summary of its opinion to the candidate consistent with the confidentiality provisions of Article IV.B and IV.C of the *Faculty Code*, after a prompt review and clearance of that summary by the Provost;

WHEREAS, if the Provost has sustained a decision to deny a candidate’s application for tenure or promotion after reviewing the Executive Committee’s report, the candidate should be permitted to submit an additional written statement to the President, who will then make a final decision, which may include a one-year extension of the probationary period of a candidate for tenure pursuant to amended Article IV, Section 3.1(d) of the *Faculty Code*;

WHEREAS, in grievance proceedings, when an unsuccessful candidate for tenure or promotion is entitled to inspect and copy relevant documents, such inspection and copying should be subject to the enhanced confidentiality provisions of Articles IV.B and IV.C that the Faculty Senate has previously endorsed, and the candidate should not be able to challenge a denial of tenure or promotion on “arbitrary and capricious” grounds.

NOW THEREFORE,

BE IT RESOLVED BY THE FACULTY SENATE OF THE GEORGE WASHINGTON UNIVERSITY:

1. Article IV.A Section 3.1 should be amended by adding the following subsection (d):

d) In addition to any other extensions of the probationary period granted pursuant to this Section 3.1, the President may approve a one-year extension of the probationary period of a candidate for tenure as provided in Paragraph B.7 of the Procedures for the Implementation of the Faculty Code.
2. Article IV.B of the *Faculty Code* should be amended to add the text in italics.
 4. The confidentiality of sources of information and evaluations obtained during the promotion process (including external review letters and evaluative transmittal memoranda) shall be strictly maintained, and will not be made available to a candidate for promotion, including under Section E.4.c)3) of the Procedures for the Implementation of the Faculty Code. Notwithstanding the above, the substance of evaluative reviews may be shared with a candidate for promotion in appropriate circumstances (e.g. under Sections B.6 and B.7 of the Procedures for the Implementation of the Faculty Code) only to the extent that such sharing does not jeopardize the confidentiality of the source’s identity.
3. Article IV.C of the *Faculty Code* should be amended to add the text in italics.
 4. The confidentiality of sources of information and evaluations obtained during the tenure process (including external review letters and evaluative transmittal memoranda) shall be strictly maintained, and will not be made available to a candidate for promotion, including under Section E.4.c)3) of the Procedures for the Implementation of the Faculty Code. Notwithstanding the above, the substance of evaluative reviews may be shared with a candidate for promotion in appropriate circumstances (e.g. under Sections B.6 and B.7 of the Procedures for the Implementation of the Faculty Code) only to the extent that such sharing does not jeopardize the confidentiality of the source’s identity.
4. Article X.B of the *Faculty Code* should be amended to add the text in bold italics, the additions in regular italics and deletions indicated having been passed by the Faculty Senate in Resolution 19/5.

To maintain a grievance, the complaining party must allege that he or she has suffered a substantial injury resulting from *the* violation of rights or privileges, ~~concerning academic freedom, research or other scholarly activities, tenure, promotion, reappointment, dismissal, or sabbatical or other leave,~~ arising from:

1. Acts of discrimination prohibited by federal or local law;
2. Failure to comply with the *Faculty Code*, ~~or Faculty Handbook~~, *the terms and conditions of the grieving party's letter of appointment or reappointment*, or other rules, regulations, and procedures established by the university;
3. Arbitrary and capricious actions on behalf of the university, or arbitrary and capricious applications of federal or local statutes and regulations; or
4. Retaliation for exercise of *Code*-protected rights.

Candidates for tenure or promotion may not file a grievance based on (3) above.

5. Paragraph B.7 of the *Procedures for the Implementation of the Faculty Code* shall be amended by deleting the Paragraph in its entirety and substituting the following Paragraph in its place:

The Provost's decision in such matters shall be final, subject to the remainder of this Paragraph B.7 and Paragraph B.8. Variant or nonconcurring recommendations from a School-Wide Personnel Committee or administrative officer, together with the record and supporting reasons identified in Sections C.1 and E of Part IV of the Faculty Code, shall be sent to the Executive Committee of the Faculty Senate. The Executive Committee may request and consider additional relevant information and statements (presented orally) with respect to such variant or nonconcurring recommendations from the department or the appropriate unit thereof, the School-Wide Personnel Committee, and the appropriate administrative officers. Following the Executive Committee's review of the record and any such additional information and statements, the Executive Committee shall make recommendations to the department or the appropriate unit thereof, to the School-Wide Personnel Committee, and to the appropriate administrative officers.

If the Provost has issued a decision against tenure or promotion, the Executive Committee shall also invite the candidate to submit to it a written statement if the candidate believes that the Provost's decision is arbitrary and capricious. Any written statement submitted by the candidate shall be added to the candidate's dossier. Following its review, the Executive Committee shall include in its recommendations a statement of its opinion as to whether the Provost's decision is arbitrary and capricious. The Executive Committee shall provide its recommendations and opinion to the Provost before circulating them. Following the Provost's review of the Executive Committee's recommendations and opinion, unless the Provost decides to issue a revised decision in favor of tenure or promotion, the Executive Committee shall (1) circulate those materials to the department or the appropriate unit thereof, to the School-Wide Personnel Committee, and to the appropriate administrative

officers, and (2) provide to the candidate a summary of its opinion on the Provost's decision, excluding any confidential evaluative information. The Executive Committee shall provide the summary of its opinion to the Provost for the Provost's prompt review and clearance before the Executive Committee provides the summary to the candidate.

If concurrence cannot be obtained after opportunity for reconsideration of the faculty recommendations (whether positive or negative) and the Provost's decision in light of the recommendations of the Executive Committee, the record and the report of the Executive Committee shall be transmitted to the President. The candidate may submit an additional written statement to the President within five (5) business days after receiving notice that the record and report of the Executive Committee have been transmitted to the President. The President will thereafter issue a final decision, subject to Paragraph B.8, and the President's decision may include a one-year extension of the probationary period of a candidate for tenure pursuant to Article IV, Section 3.1d).

6. Section E.4.c.3 of the Faculty Code should be amended by adding the language in italics:

The procedure at the hearings shall be informal but shall comply with the requirements of fairness to the parties. The Hearing Committee is not required to comply with rules of evidence applicable in courts of law and may receive any relevant evidence that is not privileged. The Hearing Committee may decline to consider evidence when its probative value is outweighed by considerations of unfair prejudice, confusion of the issues, undue delay, waste of time, or needless presentation of cumulative evidence. The parties shall be entitled to testify on their own behalf; to call as material witnesses any member of the university faculty, administration, or staff and any other person who is willing to testify; to present written and other evidence; and to cross-examine witnesses called by other parties. *Subject to Articles IV.B and IV.C*, a party shall be entitled to inspect and copy, in advance of the hearing, all relevant documents in the control of the other party and not privileged and may offer such documents or excerpts therefrom in evidence.

Professional Ethics & Academic Freedom Committee
April 12, 2019

Adopted by the Faculty Senate
April 12, 2019