

Article 11- NTT GRIEVANCE PROCEDURE FOR DENIAL OF REAPPOINTMENT AND/OR PROMOTION

The purpose of this Article is to help ensure the integrity of the reappointment and promotion process for Non Tenure Track (NTT) faculty, to provide a process for determining whether evaluations resulting in negative personnel actions were procedurally flawed, and to provide remedies in cases where such procedural flaws are found. Disagreement with the academic judgment of any evaluator or evaluative body is not considered a flaw and is not cognizable. For purposes of this grievance procedure, writers of letters of evaluation (including user and/or peer letters in Libraries cases) are not considered evaluators.

The procedures set forth below are the established avenues for NTT grievances related to denial of reappointment and/or promotion under the University's "Appointments, Reappointments and/or Promotions of Non-Tenure Track Faculty" procedure or the "Academic Promotion Instructions" for non-tenure track faculty and librarians.⁷

A. Definition of a Grievance

1. A grievance pursuant to this procedure is an allegation that, in the course of evaluation for reappointment and/or promotion, there occurred:

- a. A material⁸ procedural violation of University policies and/or procedures related to reappointment and/or promotion considerations for non-tenure track faculty, and/or appointment of law school faculty to long-term presumptively renewable contracts. This includes but is not limited to the Academic Promotion Instructions for Non-Tenure Track Faculty (Libraries and non-Libraries) and/or their appendices; the Appointments, Reappointments and/or Promotions of Non-Tenure Track Faculty procedures, and established practices⁹ related to reappointment/promotion considerations of non-tenure track faculty, and/or appointment of law school faculty to long-term presumptively renewable contracts;
- b. Discrimination or Enmity by an evaluator or an evaluative body against the grievant;
- c. A material⁸ factual inconsistency¹⁰ in the narrative of an evaluator or evaluative

⁷ If a grievance alleges anything other than the grounds as specified in Section A.1(a) - Section A.1.(d), it shall be submitted and handled in accordance with the procedures specified in Article 9 of this contract. Grievances alleging discrimination on the basis of any protected classification identified in Article 4 shall follow the process outlined in Appendix E. In no case is a grievance concerning non-reappointment or denial of promotion of NTT faculty governed by or cognizable under Article 10 of the parties' collective agreement.

⁸ A procedural violation or factual inconsistency is considered material if it had an important influence or effect upon the evaluation.

⁹ "Established Practice" within the meaning of this procedure is one which is not inconsistent with either a University Policy or a provision of the parties' collective agreement.

¹⁰ For purposes of this grievance procedure, "factual inconsistency" does not mean disagreements with or between the academic judgment of any evaluator or evaluative body.

body with the record as presented in the candidate's packet;

d. The evaluation was not in accord with i) the criteria for reappointment or promotion as set forth in the University Policy with Respect to Academic Appointments and Promotions; ii) the criteria for reappointment or promotion established by departments or units; iii) the criteria for reappointment or promotion set forth in the faculty member's letter of appointment; or iv) the criteria for appointment of law school faculty to long-term presumptively renewable contracts.

B. The Grievance Procedure

1. Grievances shall be presented on a form jointly agreed to by the University and the AAUP-AFT within the timeframes established below.

2. The timeframes established below may be extended by mutual consent between the AAUP-AFT and the Office of Academic Labor Relations.

3. "Working days" are all days on which the administrative offices of the University are open for business as specified in the administrative working calendar.

4. For purposes of this procedure, the University representative, the University representative's advisors and the grievant's advisors shall be employees of the University or of the AAUP-AFT, unless the parties agree to waive this requirement in individual instances.

5. A grievance under this Article must be filed by a faculty member with the Office of Academic Labor Relations within twenty (20) working days from the date on which the AAUP-AFT received written notice of a faculty member's non-reappointment and/or denial of promotion. Such grievances shall be logged in as to the date of receipt and a copy forwarded within one working day to the AAUP-AFT. At the time of filing, the grievant shall identify his/her advisor(s) on the grievance form and provide contact information.

6. If the grievance is timely filed and alleges one or more of the violations set forth in Sections A.1(a) through A.1(d) above, a grievance committee shall be convened.

C. The Constitution of the Grievance Committee and the Processing of the Grievance

1. Lists identifying two Grievance Committee pools will be provided to each campus Chancellor's office annually. "Pool One" shall be constituted from among all campus tenured faculty. "Pool Two" shall be constituted from among all NTT campus faculty at or above the rank of Associate Professor with at least five (5) consecutive years of full-time service as an NTT faculty member at the university. University Human Resources will randomly select twenty (20) faculty members from the appropriate population in order to constitute Pool One, and ten (10) faculty members from the appropriate population in order to constitute Pool Two. The random process to be utilized will be jointly agreed to by the University's Office of Academic Labor Relations and the AAUP-AFT. The randomly

selected faculty members for each pool will then be listed in the order in which their names were selected.

2. For each grievance that is timely filed and that alleges one or more of the violations set forth in Sections A.1(a) through A.1(d) above, two individuals will be selected in numerical order from Pool One and one individual will be selected in numerical order from Pool Two.
3. No faculty member shall serve on a grievance committee for a case in which he/she has participated in the evaluation process.
4. Committee members shall be notified of their selection by a joint letter from the University and AAUP-AFT. At the same time, a copy of the grievance shall be sent to each committee member along with a copy of this grievance procedure, the grievant's reappointment/promotion packet (excluding confidential letters of evaluation), and a copy of the "Grievance Committee Findings and Recommendation Form"¹¹. The AAUP-AFT shall inform the grievant of the committee selection.

When possible, the letter of notification to the Committee will include identification of the University Representative and advisor(s) together with contact information; in all other cases, the Committee and AAUP-AFT will be subsequently notified of the identification of the University Representative and advisor(s) and their contact information.

5. The Committee members shall designate among themselves a member to serve as committee chair. The Committee Chair shall be responsible for scheduling a meeting with the grievant, his/her advisors, the University's representative and the University representative's advisors. The grievance committee shall make a good faith effort to meet to hear the grievance within fifteen (15) working days from notice of selection as set forth in 4 above.
6. The grievant and the University representative may each be assisted by up to two (2) advisors at this meeting. There shall be no ex parte communication with members of the grievance committee under any circumstances.
7. The grievance meeting is intended to provide an opportunity for the grievant to present his/her grievance and to answer any questions the committee may have. The grievant (or his/her advisors) and the University's representative shall be allowed up to one hour each to address the committee for a total meeting time of two hours unless the committee agrees to allow additional time. The meeting shall only address the allegations included in the grievance statement.
8. Within five (5) working days of a meeting, the grievance committee shall make a good faith effort to render its decision on the "Grievance Committee Findings and

¹¹ The "Grievance Committee Findings and Recommendation Form" shall be jointly developed and agreed to by the University's Office of Academic Labor Relations and the AAUP-AF

Recommendation Form.” The committee chair will be responsible for distribution of the completed form to the grievant, the AAUP-AFT, the Chancellor, the Dean or Director of the unit, and the Office of Academic Labor Relations.¹²

9. The grievance committee’s role is limited to determining if the alleged violation has been proven by a preponderance of the evidence. For each allegation sustained by the grievance committee, the committee shall identify who committed the specific violation and which level of evaluation was affected by the violation. The grievance committee shall not make judgments as to whether the grievant should receive reappointment and/or promotion.
10. If the grievance committee sustains one or more of the allegations it shall order a remand, which is the sole and exclusive remedy under this procedure. The grievance committee shall provide its recommendation to correct the defect(s) identified in the sustained allegation(s) and may provide any additional commentary and analysis it deems appropriate.

If the grievance committee does not sustain any of the allegations, the grievance is considered denied and no further action shall be taken.

Remand Process:

- A. The remanded evaluation shall be conducted on the basis of the materials that were used in the original evaluation, except as appended to or corrected upon written agreement between the grievant and the University. If no agreement is reached within seven (7) working days, the University Representative shall issue instructions for the remanded evaluation, with copies to the grievant and the AAUP-AFT.
- B. The remanded evaluation shall be completed and the grievant notified of the final decision related to the reappointment/promotion prior to the end date of the grievant’s appointment.
- C. The outcome of remanded evaluations are final and binding and not subject to this or any other grievance or appeal process.
- D. Evaluators against whom allegations of discrimination or enmity have been sustained shall be excluded from a remanded evaluation.

¹² The Findings and Recommendation Form provided to the committee will include appropriate contact information.