

University September 29, 2020 Proposal

Legend: This is a clean version of the University's August 20, 2020 Proposal with additions shown in bold/underline.

Article ____

NTT Grievance Procedure for Denial of Promotion

The purpose of this Article is to help ensure the integrity of the promotion process for Non Tenure Track (NTT) faculty. This Article provides a process for determining whether evaluations resulting in the denial of a promotion were procedurally flawed and provides remedies in cases where such procedural flaws are found. With respect to promotion denials, 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 are not considered evaluators.

Appeal Procedure for the Denial of a Promotion

The procedures set forth below are the established avenues for NTT grievances related to denial of promotion under the University's "Academic Promotion Instructions for Non-Tenure Track Faculty with Appointments in Rutgers Biomedical and Health Sciences" procedure or the "Appointments, Reappointments and/or Promotions of Non-Tenure Track Faculty in Rutgers Biomedical and Health Sciences."¹

I. Definition of a Grievance

A grievance pursuant to this procedure is an allegation that, in the course of evaluation for promotion, there occurred:

- a. A material² procedural violation of University policies and/or procedures related promotion considerations for non-tenure track faculty. This includes but is not limited to the Academic Promotion Instructions for Non-Tenure Track Faculty with Appointments in Rutgers Biomedical and Health Sciences" and/or their appendices; the "Appointments, Reappointments and/or Promotions of Non-Tenure Track Faculty in Rutgers Biomedical and Health Sciences" and/or their appendices; the Rutgers Biomedical and Health Sciences Policies and Guidelines Governing Appointments, Promotions, and Professional Activities of the Faculty, and established practices³ related promotion considerations of non-tenure track faculty;

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

² A procedural violation or factual inconsistency is considered material if it had an important influence or effect upon the evaluation.

³ "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.

- b. Discrimination or enmity by an evaluator or an evaluative body against the grievant;
- c. A material² factual inconsistency⁴ in the narrative of an evaluator or evaluative body with the record as presented in the candidate's packet;
- d. The evaluation was not in accord with i) the criteria for promotion as set forth in the University Policy with Respect to Academic Appointments and Promotions; ii) the criteria for promotion established by departments or units; or iii) the criteria for promotion set forth in the Rutgers Biomedical and Health Sciences Policies and Guidelines Governing Appointments, Promotions, and Professional Activities of the Faculty.

2. The Grievance Procedure

- a. Grievances shall be presented on a form jointly agreed to by the University and the AAUP-BHSNJ within the timeframes established below.
- b. The timeframes established below may be extended by mutual consent between the AAUP-BHSNJ and the Office of Academic Labor Relations.
- c. "Working days" are all days on which the administrative offices of the University are open for business as specified in the administrative working calendar.
- d. 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-BHSNJ, unless the parties agree to waive this requirement in individual instances.
- e. 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-BHSNJ received written notice of a faculty member's 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-BHSNJ. At the time of filing, the grievant shall identify his/her advisor(s) on the grievance form and provide contact information.
- f. 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.

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

⁴ For purposes of this grievance procedure, "factual inconsistency" does not mean disagreements with or between the academic judgment of any evaluator or evaluative body.

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- a. Grievance Committee members will be selected by the Chancellor's Office. The pool of eligible Committee members shall consist of AAUP-BHSNJ negotiations unit members 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. Annually, the Chancellor or his/her designee will randomly select twenty-five (25) faculty members, five from each of the four (4) non-tenure tracks (Teaching Track, Clinical Track, Professional Practice Track, and Research Track) and five (5) tenured faculty. The random process to be utilized will be jointly agreed to by the University's Office of Academic Labor Relations and the AAUP-BHSNJ. The randomly selected faculty members will then be listed in the order in which their names were selected.
- b. 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, three (3) individuals will be selected in numerical order to convene a grievance committee.
- c. No faculty member shall serve on a grievance committee for a case in which he/she has participated in the evaluation process.
- d. Committee members shall be notified of their selection by a joint letter from the University and AAUP-BHSNJ. 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 promotion packet (excluding confidential letters of evaluation), and a copy of the "Grievance Committee Findings and Recommendation Form."⁵ The AAUP-BHSNJ shall inform the grievant of the committee selection.
- e. 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-BHSNJ will be subsequently notified of the identification of the University Representative and advisor(s) and their contact information.
- f. 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.
- g. 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.

⁵ 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-BHSNJ.

- h. 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.
- i. 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 Recommendation Form." The committee chair will be responsible for distribution of the completed form to the grievant, the AAUP-BHSNJ, the Chancellor, the Dean or Director of the unit, and the Office of Academic Labor Relations.⁶
- j. 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 promotion.
- k. 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.
- l. If the grievance committee does not sustain any of the allegations, the grievance is considered denied and no further action shall be taken.

4. 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-BHSNJ.
- b. The remanded evaluation shall be completed and the grievant notified of the final decision related to the promotion prior to the end date of the grievant's appointment.

⁶ The Findings and Recommendation Form provided to the committee will include appropriate contact information.

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- 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.

The decision not to reappoint an NTT faculty member may be grieved exclusively pursuant to Article __ as a Category Two grievance, except that alleged violations of Article (Prohibited Discrimination and Prohibited Harassment) may be grieved as a Category One grievance.

Commented [DC1]: Move to Article V - Under the definition of a Category Two grievance

On behalf of the University:



Date: 10/7/20

On behalf of the AAUP-BHSNJ:



Date:

10/5/20