

Faculty Senate Rules for Appeals and Grievances

1. Appeals of Decisions on Promotion and Tenure

On the recommendation of the Convenor of Appeals and Grievances, the Executive Committee of the Faculty Senate may constitute panels of faculty to investigate appeals of decisions on promotion and tenure.

A. Scope, Grounds, and Timing

A decision about promotion and tenure that has been considered by the Promotion and Tenure Committee may be appealed under this section. Such an appeal can be brought forward only by the faculty member who is the subject of that decision. All other decisions on promotion and retention for faculty eligible to vote in elections for the Faculty Senate may only be reviewed under the process for submitting grievances, described in Section 2 of this document.

A decision about promotion and tenure that has been considered by the Promotion and Tenure Committee may only be appealed on the grounds that in making the decision university procedure was, in a material way, either not followed or implemented in an arbitrary or capricious manner, resulting in a substantially negative effect on the process. The faculty members empanelled to investigate the case are, in consultation with the Convenor, the arbiters of whether adequate grounds for appeal under this policy exist. A decision not to review all or part of an appeal because of inadequate grounds may be appealed directly to the President.

A letter of intent to appeal under this section must be received by the Convenor by the 30th calendar day after the Appellant receives official notification of the outcome of the promotion and/or tenure decision by the President or his or her designee.

The work of an appeal panel under this section will, in normal circumstances, be completed by October 1 of the year the appeal was received, with final report issued by the Convenor by October 15.

B. Panel Charge

Panels investigating appeals under this section are charged to determine to the best of their ability the facts involved in the case and to prepare a report and recommendation to the President.

C. Panel Membership

The members of panels to consider appeals on promotion and tenure will be nominated by the Convenor, and approved by the Executive Committee of the Faculty Senate. If the Executive Committee rejects a nominated panel member, the Convenor will submit an alternative nominee.

The Convenor will also designate a chair of the panel. The Convenor will not serve as a member or chair of the panel.

Panels will consist of three tenured members of the faculty eligible to vote in Faculty Senate elections. At least one member of the panel must be a member of the Faculty Senate at the time of appointment.

No individual that was directly involved in the promotion and tenure case being appealed may be a member of the panel. This includes anyone who had the right to vote on the case at any stage in the promotion and/or tenure process, as well as anyone who had previously commented on the case in any form that appears in the Appellant's tenure and/or promotion dossier. The Convenor is responsible for assuring that these conditions are met and that there are no other conflicts of interest among the members of the panel.

D. Confidentiality

All participants, including but not limited to faculty members and administrators, are expected to maintain confidentiality about all aspects of the proceedings. No material given to the Panel should be divulged outside the proceedings.

The Panel should be exceedingly mindful of confidentiality concerns when discussing or summarizing the substance of confidential documents and communications to individuals who are not on the panel but otherwise involved in the proceedings, particularly for those aspects that may be highly confidential as part of the promotion and tenure process (such as letters from external reviewers). In no case should the panel provide such documents or communications verbatim to anyone not on the panel or disclose excerpts or summaries that will undermine confidentiality, except to the Convenor or to the President as part of the Panel's report.

When the Convenor forms a panel under this section, he or she will inform the President and Provost of the name of the Appellant, the membership of the Panel and the general nature of the case. The President and Provost will be informed when a case is closed.

While individuals providing information to the panel should be told that the proceedings are intended to be confidential and that information provided by witnesses will be handled with discretion, the panel is unable to promise that the identity of or information provided by such individuals will remain confidential under all circumstances.

E. Procedure

A letter of the Intent to Appeal under this section must be received by the Convenor before the deadline specified above. At this time, the Convenor will begin the process of forming a panel and the Appellant will prepare the appeal itself, which is a document that gives details supporting his or her case. The appeal document from the Appellant should ordinarily be received by the Convenor within 60 calendar days from the date of the letter of Intent to Appeal. If the Appellant wishes an extension for compelling reasons, he or she must request such an extension from the Convenor within the 60-day period. Absent extraordinary circumstances, the appeal document must be received by September 1st of the year in which the promotion and tenure decision was rendered.

This appeal document should include:

- A list of the specific grounds for appeal and a justification for each
- A list of names of individuals who may have information pertinent to the case
- Any documents or other supporting materials germane to the case

The faculty recognizes that appellants under this section often lack the information about the details of their promotion and tenure process that are necessary fully to justify a case. As such it is appropriate for the appellant to take any or all of the following actions as part of the appeal document:

- Ask the Convenor to inquire about a specific fact or set of facts to which the Appellant has limited access but that may be relevant to the substantiation of the grounds for appeal (e.g., the timeline described in the Dossier). Based on his or her review of the relevant facts, the Convenor may provide an opinion about whether the facts support grounds for appeal. It is the Convenor's responsibility to be mindful of the confidentiality of the Dossier, and of tenure deliberations more broadly, and to weigh these concerns in his or her response to the Appellant's request (including the option to decline to provide any response to an inquiry).
- Identify another individual who is privy to information relevant to the appeal and indicate that the Appellant has asked such person to submit to the Convenor a separate document in support of the appeal, which should address any or all of the three points to be included in the Appellant's appeal document (listed above). The Convenor can then pursue with such individual whether and when such a document will be submitted so that the appeal document (including such supplemental material) can be received in a timely manner.

Once a panel is formed and the Convenor receives the appeal document, he or she will notify the President and Provost of these facts and provide a general description of the nature of the case.

The first task of the panel is to determine, in consultation with the Convenor, whether the appeal, on its face and assuming the facts as claimed by the Appellant are true, presents sufficient grounds for appeal under University policy and these procedures. This determination should be made separately for each of the discrete grounds raised in the appeal. If any or all of these grounds are determined to be inadequate on their face, this should be communicated to the Convenor who will expeditiously communicate this to the Appellant.

If the panel concludes that the appeal presents on its face sufficient grounds for further investigation, the panel will as soon as practicable commence its investigation, which may include review of documents and requests for information as well as interviews with individuals who may have knowledge relevant and material to the issues presented by the appeal. The panel is free to determine its own methods of investigation, consistent with these procedures. However, should the panel seek documents or information from or interviews with individuals whose role in the promotion and tenure process may be subject to review as part of the appeal, the panel should first provide a copy of the appeal document, the portion relating to that individual, or a sufficient summary of the claims as to provide the individual with adequate notice of the Appellant's assertions in the appeal relating to that individual.

Since these appeal procedures are not those of a court of law, they should be carried out with flexibility and in a spirit of collegiality in order to avoid an overly legalistic approach. The Appellant is expected to

present the appeal and speak for himself or herself directly when dealing with the panel, as is the case with faculty colleagues.

E.1. Review of documents and requests for information: The panel should directly request any relevant and material documents or information required for their investigation from the relevant parties. This may include requests for individuals to respond to written questions.

It is the presumption of the faculty that university administrators, faculty, and staff will grant any reasonable request for relevant and material documents and to respond to any reasonable request for written answers to specific questions. If a faculty, staff member or administrator refuses a request for documents and/or to respond to a request for written answers to specific questions, the person should be asked to provide the reason for his or her refusal and this must be noted in the final report. The names and/or offices of the relevant individuals should be included in the version of that report that goes to the President, but need not be revealed in the version of the report that goes to the Appellant.

In all cases appealed under this section, the panel should request, from the Provost's office, the Dossier that was reviewed by the Promotion and Tenure Committee. The responsibility for controlling access to the dossier (and any other documents reviewed by the panel) to assure maintenance of confidentiality is the responsibility of the Chair of the panel. The Chair must return the Dossier to the Provost's office at the end of the panel's work. Further, any copies of the Dossier, made for the convenience of the panel, must be destroyed at this time.

In no case should documents or written responses to questions provided to the panel under the reasonable expectation of confidentiality be provided to individuals not on the panel, other than the Convenor or to the President as part of the final report.

E.2. Interviews: The panel may interview whomever it deems appropriate to supply relevant and material information about the appeal. The need for confidentiality will be stressed to all participants. Neither the names of the Interviewees nor the times of the interviews will be divulged outside the final report. All Interviewees will appear individually. No one will be allowed to accompany Interviewees during the interview.

It is the presumption of the faculty that university faculty, staff, and administrators will cooperate with any reasonable request by a panel for an interview. If a faculty, staff member or administrator refuses a requested interview or does not respond to or cooperate with reasonable efforts to schedule an interview, the person should be asked to provide the reason for his or her refusal and this must be noted in the final report. The names and/or offices of the relevant individuals should be included in the version of that report that goes to the President, but need not be revealed in the version of the report that goes to the Appellant.

E.3. Records: Audio recordings of the formal interviews before panel will be made. These confidential recordings will be given to the Convenor along with the final report of the panel. These will be kept in a confidential archive of the Senate, maintained by the Faculty Senate Assistant. The audio recordings will be destroyed, with the approval of the General Counsel, one year after the case is closed. Although

panel members are also free to take whatever personal notes they deem necessary, they must take steps to ensure that any confidential information encompassed within such notes is protected. Panel members should also be aware that such personal notes may be required to be disclosed in litigation. Such personal notes will not be part of the record of the case, but may need to be preserved by such panel members in the event of litigation or a claim, if advised of such litigation or claim by the Office of General Counsel.

F. Panel Report

The panel will produce a report to be sent (in an electronically editable form) to the Convenor. The report will normally include:

- A summary of the grounds for appeal that were considered and accepted or not by the Panel, and the reasoning supporting this decision.
- A summary of the process used to investigate the appeal, including the names of any individuals who were asked to provide documents, answer written questions, or be interviewed by the panel (as well as the disposition of such requests).
- An assessment of the factual claims relevant to the case
- The panel's view whether the facts appear to establish that university procedures were, in a material way, either not followed or implemented in an arbitrary or capricious manner, resulting in a substantially negative effect on the process
- A recommendation to the President
- Any supplementary documents the panel deems necessary

If the members of the panel cannot come to unanimous agreement on the content of all or part of the report, the plurality opinion will prevail. In such cases, however, this should be noted in the report itself by clearly identifying which parts of the report did not receive unanimous consent. Individual panel members may, if they choose, write dissenting opinions on all or part of the report. Appropriately edited versions of these opinions should be included with the final reports prepared by the Convenor.

The panel report should not be redacted in any substantial way by the panel itself in order to address confidentiality concerns. Instead, any particular concerns about confidentiality (e.g., if an informant asked not to be identified) should be noted in the report itself. The responsibility for redacting the final report to address issues of confidentiality falls to the Convenor.

G. Convenor's Reports

After receiving the Panel Report, the Convenor will prepare a final report to the President and the Speaker of the Faculty Senate, and a report to the Appellant. These reports may only differ from the Panel Report in order to protect the confidentiality of elements in the promotion and tenure process, the confidentiality of informants as well as of the confidentiality of individuals who participated in the appellant's tenure process. The Convenor must use his or her best judgment in protecting confidentiality while providing reasonable support for the panel's conclusions in the final report provided to the Appellant.

The report to the President and the Speaker of the Senate should be redacted only in cases in which an individual informant has specifically asked to remain anonymous and the request for anonymity is reasonable under the circumstances, recognizing, however, that absolute confidentiality regarding witness identities and statements is not possible and should not be promised as part of the process.

The report to the appellant should be redacted as little as possible. However, it should not reveal confidential details of the deliberations surrounding tenure and promotion or the conclusions or identities of outside letter writers. Moreover, if there is a good reason to protect the identity of particular informants during the appeal process, such identifications should be redacted, unless, in the best judgment of the Convenor, it is impossible adequately to convey the panel's conclusions, and the reasoning behind them, without doing so.

Reports issued by appeal panels and by the Convenor will be kept in a confidential archive of the Senate, maintained by the Faculty Senate Assistant. The archive can be accessed by the Convenor, with the Agreement of the Speaker of the Senate. Access will also be provided to the General Counsel if needed for legal reasons.

H. Convenor's Role during the Process of Promotion and Tenure

If, during an on-going tenure or promotion process, an individual reasonably believes a situation has occurred, or is likely to occur, that would constitute adequate grounds for a future appeal as defined in this section, he or she should immediately notify the Convenor of Appeals and Grievances by sending him or her a written statement setting forth such concerns. Such an individual may also communicate directly with the Provost on his or her concerns.

The Convenor will then immediately convey the statement of concerns to the Provost who has the discretion to look into the matter further and take any other actions he or she finds appropriate. In any case, within two weeks of receiving the Convenor's report, the Provost should notify the Convenor of his or her decision and describe any actions taken. The Convenor will then send a brief response to the individual summarizing the Provost's response to his or her concerns.

Under no circumstances will the presence or absence of a complaint during the on-going tenure process compromise the right of a candidate to pursue a legitimate appeal of a decision on promotion and tenure. In addition, the presence or absence of such a complaint should not in any way impact the panel's judgment on any such appeal that comes forward.

Written statements of concern about specific promotion and tenure cases received by administrators during the on-going tenure and promotion process should be forwarded to the Provost. Such statements, as well as those received by the Convenor under this section, will not ordinarily be included in the candidate's Dossier. However, such statements, as well as any documented responses to such statements, should be preserved by the Provost and be available in the event of an appeal.

I. Final Disposition of Appeals Cases

After reviewing the Convenor's report, the President will make a final disposition on the appeal.

2. Grievances

On the recommendation of the Convenor of Appeals and Grievances, the Executive Committee of the Faculty Senate may constitute panels of faculty to investigate grievances.

A. Scope, Grounds, and Timing

Any faculty member eligible to vote in elections to the Faculty Senate may initiate a grievance against an administrative action that is not in accordance with established university policy, that was made in a way that violates established university procedures, that was otherwise made in an arbitrary or capricious manner, or that represents an abuse of the discretion afforded to the relevant administrator(s) by the president. This includes grievances over an imposed sanction under University Policy No. 201, §§ 8.b.2 and 8.b.3. A faculty member subject to the process for termination, suspension or a severe sanction under University Policy No. 201, §§8.a or 8.b.1, however, shall enjoy the procedures provided pursuant to those sections, and the result of such procedures shall not be subject to this grievance procedure.

Any decision on promotion and tenure that has been formally considered by the Promotion and Tenure Committee may only be appealed under the appeals section in Section 1 above.

Grievances can only be initiated under this policy after the aggrieved faculty member has made a good faith effort to resolve the matter with the appropriate university officials and exhausted his or her internal petitions (which need not include a petition to the President).

The grievance and all supporting material must be filed within 60 calendar days of the act or omission that gives rise to the grievance or the date of the final disposition of any internal appeal. The work of grievance panels under this section will, in normal circumstances, be completed within three months after the grievance is received, with final report by the Convenor issued at most two weeks later.

B. Panel Charge

Panels investigating grievances under this section are charged to determine to the best of their ability the facts involved in the case and to prepare a report and recommendation to the President.

C. Panel Membership

The members of panels to consider grievances will be nominated by the Convenor, and approved by the Executive Committee of the Faculty Senate. If the Executive Committee rejects a nominated panel member, the Convenor will submit an alternative nominee.

The Convenor will also designate a chair of the panel. The Convenor will not serve as a member or chair of the panel.

Panels will consist of three members of the faculty eligible to vote in Faculty Senate elections. At least two members of the panel must be tenured faculty members and one member of the Panel must be a member of the Faculty Senate at the time of appointment. The Convenor is responsible for assuring that there are no conflicts of interest among the members of the panel.

D. Confidentiality

The Panel should be exceedingly mindful of confidentiality concerns when discussing or summarizing the substance of confidential documents and communications to individuals who are not on the panel but otherwise involved in the proceedings. In no case should the panel provide such documents or communications verbatim to anyone not on the panel or disclose excerpts or summaries that will undermine confidentiality, except to the Convenor or to the President as part of the Panel's report.

When the Convenor forms a panel under this section, he or she will inform the President and Provost of the name of the Grievant, the membership of the Panel and the general nature of the case. The President and Provost will be informed when a case is closed.

While individuals providing information to the panel should be told that the proceedings are intended to be confidential and that information provided by witnesses will be handled with discretion, the panel is unable to promise that the identity of or information provided by such individuals will remain confidential under all circumstances.

E. Procedure

In the grievance, the Grievant must state why he or she believes the challenged action and providing all details and documents supporting the case. The grievance document should include:

- A list of the specific grounds for the grievance and a justification for each
- A list of names of individuals who may have information pertinent to the case
- Any documents or other supporting materials germane to the case
- A description of any attempts at resolution and the outcome of those attempts
- A description of the remedies to the grievance that the Grievant seeks.

If this grievance document is timely received by the Convenor, the Convenor will form a panel pursuant to Section 2(C) above.

The first task of the panel is to determine, in consultation with the Convenor, whether the grievance, on its face and assuming the facts as claimed by the Grievant are true, presents sufficient grounds for grievance under these procedures. This determination should be made separately for each of the discrete grounds raised in the grievance. If any or all of these grounds are determined to be inadequate on their face, this should be communicated to the Convenor who will expeditiously communicate this to the Grievant. A determination by the panel that the grievance does not present on its face sufficient grounds for investigation is final and cannot be appealed.

If the panel concludes that the grievance presents on its face sufficient grounds for further investigation, it will as soon as practicable commence its investigation, which may include review of documents and requests for information as well as interviews with individuals who may have knowledge relevant and material to the issues presented by the appeal. The panel is free to determine its own methods of investigation, consistent with these procedures. However, should the panel seek documents or information from or interviews with individuals whose role in matter may be subject to review as part of the grievance, the panel should first provide a copy of the grievance document, the portion relating to

that individual, or a sufficient summary of the claims as to provide the individual with adequate notice of the Grievant's assertions in the grievance relating to that individual.

Since these grievance procedures are not those of a court of law, they should be carried out with flexibility and in a spirit of collegiality in order to avoid an overly legalistic approach. The Grievant is expected to present the grievance and speak for himself or herself directly when dealing with the panel, as is the case with faculty colleagues.

E.1. Review of documents and requests for information: The panel should directly request any relevant and material documents or information required for their investigation from the relevant parties. This may include requests for individuals to respond to written questions.

It is the presumption of the faculty that university administrators, faculty, and staff will grant any reasonable request for relevant and material documents and to respond to any reasonable request for written answers to specific questions. If a faculty, staff member, or administrator at Rice refuses a request for documents and/or to respond to a request for written answers to specific questions, the person should be asked to provide the reason for his or her refusal and this must be noted in the final report. The names and/or offices of the relevant individuals should be included in the version of that report that goes to the President, but need not be revealed in the version of the report that goes to the Grievant.

In no case should documents or written responses to questions provided to the panel under the reasonable expectation of confidentiality be provided to individuals not on the panel, other than the Convenor or to the President as part of the final report.

E.2. Interviews: The panel may interview whomever it deems appropriate to supply relevant and material information about the grievance. The need for confidentiality will be stressed to all participants. Neither the names of the Interviewees nor the times of the interviews will be divulged outside the final report. All Interviewees will appear individually. No one will be allowed to accompany Interviewees during the interview.

It is the presumption of the faculty that university faculty, staff, and administrators will cooperate with any reasonable request by a panel for an interview. If a faculty, staff member or administrator at Rice refuses a requested interview or does not respond to or cooperate with reasonable efforts to schedule an interview, the person should be asked to provide the reason for his or her refusal and this must be noted in the final report. The names and/or offices of the relevant individuals should be included in the version of that report that goes to the President, but need not be revealed in the version of the report that goes to the Grievant.

E.3. Records: Audio recordings of the formal interviews before panel will be made. These confidential recordings will be given to the Convenor along with the final report of the panel. It will remain in the hands of the Convenor (and if necessary passed to a new Convenor) unless requested by the President as part of the record on appeal, and will be maintained by the Convenor until one year after the case is closed. At this time, the audio recordings will be destroyed with the approval of the University General Counsel. Although panel members are also free to take whatever personal notes they deem necessary,

they must take steps to be sure that any confidential information encompassed within such notes is protected. Panel members should also be aware that such personal notes may be required to be disclosed in litigation. Such personal notes will not be part of the record of the case, but may need to be preserved by such panel members in the event of litigation or a claim if advised of such litigation or claim by the Office of General Counsel.

F. Panel Report

The panel will produce a report to be sent (in an electronically editable form) to the Convenor. The report will normally include:

- A summary of the grounds for the grievance that were considered and accepted or not by the panel, and the reasoning supporting this decision
- A summary of the process used to investigate the grievance, including the names of any individuals who were asked to provide documents, answer written questions, or be interviewed with the panel (as well as the disposition of such requests).
- An assessment of the factual claims relevant to the case
- The panel's view whether the facts appear to establish that the administrative action being grieved violates University policy or constitutes a material and substantial violation of University procedure
- Either a finding that no remedial action is justified or a recommendation that the President take specific remedial action
- Any supplementary documents the panel deems necessary

If the members of the panel cannot come to unanimous agreement on the content of all or part of the report, the plurality opinion will prevail. In such cases, however, this should be noted in the report itself by clearly identifying which parts of the report did not receive unanimous consent. Individual panel members may, if they choose, write dissenting opinions on all or part of the report, to be included with the final report. Appropriately edited versions of these opinions should be included with the final reports prepared by the Convenor.

The panel report should not be redacted in any substantial way by the panel itself in order to address confidentiality concerns. Instead, any particular concerns about confidentiality (e.g., if an informant asked not to be identified) should be noted in the report itself. The responsibility for redacting the final report to address issues of confidentiality falls to the Convenor.

G. Convenor's Reports

After receiving the Panel Report, the Convenor will prepare a final report to the President and the Speaker of the Faculty Senate, and a report to the Grievant. These reports may only differ from the Panel Report in order to protect confidential information received as part of the panel investigatory process. The Convenor must use his or her best judgment in protecting confidentiality while providing reasonable support for the panel's conclusions in the final report provided to the Grievant.

The report to the President and the Speaker of the Senate should be redacted only in cases in which an individual informant has specifically asked to remain anonymous and the request for anonymity is

reasonable under the circumstances, recognizing, however, that absolute confidentiality regarding witness identities and statements is not possible and should not be promised as part of the process.

The report to the Grievant should be redacted as little as possible. However, it should not reveal confidential information. Moreover, if there is a good reason to protect the identity of particular informants during the appeal process, such identifications should be redacted, unless, in the best judgment of the Convenor, it is impossible adequately to convey the panel's conclusions, and the reasoning behind them, without doing so.

Reports issued by grievance panels and by the Convenor will be kept in a confidential archive of the Senate, maintained by the Faculty Senate Assistant. The archive can be accessed by the Convenor, with the Agreement of the Speaker of the Senate. Access will also be provided to the General Counsel if needed for legal reasons.

H. Final Disposition of Grievance Cases

In the event that the panel report recommends that the President take any form of remedial action, the President will, after reviewing the Convenor's report, make a final disposition of the case. However, if the panel finds remedial action to be unjustified, then the grievance will be denied without further action by the President.