

WKU Faculty Senate: April 15, 2021
Faculty Handbook Revision Section V
Senate Recommendation 2021-04-07

Julia Shadoan, Senate Chair

Proposal to Amend WKU Faculty Handbook

Editorial revisions include updates to the organizational structure, web addresses and names/titles, as well as other similar non-substantive changes.

Section(s) to be amended: **V. Process for Faculty Complaint, Continuance, Promotion and/or Tenure**

Corresponding page number(s): 41-44

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1. Type of Change:

- Editorial (non-substantive)
- Substantive

Editorial revisions include updates to the organizational structure, web addresses and names/titles, as well as other similar non-substantive changes.

- Addition: Where possible, identify the section of the handbook to which addition is proposed:
- Deletion: Identify the section of the handbook from which deletion is proposed:
- Revision: Identify the section of the handbook to which revision is proposed:

2. Proposals should be made in the form of text intended as an addition to or a replacement of, in whole or in part, some current section of the Faculty Handbook.

Current:

V. PROCESS FOR FACULTY COMPLAINT, CONTINUANCE, PROMOTION AND/OR TENURE

V.A. Advisory Committee on Faculty Continuance, Promotion and Tenure:

The President is authorized to establish an Advisory Committee on Faculty Continuance, Promotion and Tenure. It shall be comprised of eligible tenured faculty members assigned to full-time teaching, research and/or academic service duties other than the faculty regent, to be selected as follows:

- Every two years, each academic department shall elect one eligible faculty member
- Nominees shall be elected by secret ballot by all members of the faculty unit holding academic rank as defined in this Handbook.
- The election of nominees shall be conducted under the rules and procedures developed by the University Senate.
- Persons elected as nominees eligible for appointment shall remain on the eligible list for a period of two academic years, and may be re-elected.

The committee shall be a standing committee consisting of five tenured faculty members. Membership on

the committee shall be selected annually from the list by lot by the University Senate Chair during a meeting of the Senate Executive Committee. Faculty members shall not participate in a case involving a faculty member from the same department, and members chosen shall remove themselves on their own initiative if they deem themselves disqualified because of bias or interest. In addition, each party shall have a maximum of two challenges without stated cause. Supplementary selections and lists shall proceed in the same manner until an accepted committee is constituted.

The committee shall designate one member as chair.

V.B. Faculty Complaint:

Upon the filing of a complaint by a faculty member regarding a negative recommendation on continuance, promotion and/or tenure, the President may cause the complaint to be set for formal evidentiary hearing by the Ad Hoc Committee and notify the complainant of the hearing. As an alternative, the President may refer the complaint to the Advisory Committee on Faculty Continuance, Promotion and Tenure for preliminary inquiry, consultation, and its reasoned advice and recommendation, and shall inform the complainant of such a referral. The Committee will seek to settle the matter by preliminary inquiry, consultation, discussion, and confidential mediation.

If the difficulty is unresolved informally within three weeks from the receipt of the complaint, the Committee shall furnish the President and the complainant with a written report containing its advice and recommendations as to whether or not the President should cause the matter to be set for formal evidentiary hearing by the Ad Hoc Committee. The report shall include a statement of the Committee's specific reasons in support of its advice and recommendation. A copy of the proceedings must be sent to the complainant.

V.C. Ad Hoc Committee on Continuance, Promotion and Tenure:

Upon the recommendation of the Advisory Committee on Continuance, Promotion and Tenure, the President shall cause the matter to be heard by an ad hoc committee.

The faculty member making the complaint herein is responsible for stating the specific grounds upon which the allegation is based and the burden of proof shall rest upon the complainant.

The ad hoc committee shall consist of five members chosen by lot by the University Senate Chair during a meeting of the Senate Executive Committee from the list of eligible individuals provided for in Section V.A. In addition, two alternates will be selected by lot by the University Senate Chair during a meeting of the Senate Executive Committee to substitute for any Ad Hoc Committee members who remove themselves if they deem themselves disqualified because of bias or interest. The alternates may not be from the same department as any of the five Ad Hoc Committee members. None of the members will have served on the Advisory Committee that had earlier heard the case. In addition, each party shall have a maximum of two challenges with or without stated cause. If the list shall be exhausted before an acceptable committee has been obtained, supplementary list selections will be made following the initial procedure. The committee shall select its chair. The committee will adhere to the following procedures:

- The faculty member will be afforded an opportunity to obtain necessary witnesses and documentary or other evidence; and the University will, insofar as it is possible for it to do so, secure the cooperation of such witnesses and make available necessary documents and other evidence within its control.
- The faculty member and the University will have the right to confront and cross-examine all witnesses. Where the witness cannot or will not appear but the committee determines that the interests of justice require admission of his/her statement, the committee will identify the witness, disclose his/her statement and if possible provide for written interrogatories.
- The hearing committee will not be bound by strict rules of legal evidence and may admit any evidence which is of probative value in determining the issues involved. Every possible effort will be made to obtain the most reliable evidence available.

- Although both parties may seek outside advice as needed, neither will be formally represented by legal counsel in these hearings.
- The hearing committee will grant adjournments to enable either party to investigate evidence as to which a valid claim of surprise is made.
- The findings of fact and the decision will be based on the hearing record, which will include documentary evidence submitted by the faculty member and the University as well as testimony by witnesses during the Committee's proceedings.
- Except for such simple announcements as may be required covering the time of the hearing and similar matters, public statements and publicity about the case by either the faculty member or the University representatives will be avoided so far as possible until the proceedings have been completed, including consideration by the Board of Regents.
- Upon conclusion of the hearing, the committee must accept or reject the complaint by the faculty member. The Ad Hoc Committee must make a written recommendation to the President.

V.D. The President:

The President must accept, reject or revise the recommendations of the Ad Hoc Committee and inform the Committee and the complainant in writing of the decision. The President must submit the President's recommendations and the Committee's recommendations to the Board of Regents.

V.E. The Board of Regents:

The Board of Regents is charged with accepting or rejecting the recommendation of the President. The Board of Regent's decision is final.

Revision:

V. ~~PROCESS FOR FACULTY COMPLAINT, CONTINUANCE, PROMOTION AND/OR TENURE~~ NON-CONTINUANCE OR NEGATIVE TENURE AND/OR PROMOTION RECOMMENDATIONS

V.A. Explanation of a Negative Decision

If a faculty member in the professorial ranks receives a negative recommendation from the President (or Provost, in the case of Instructor promotion), they may request an informal conversation with the department head, the dean, and the Provost to discuss the circumstance surrounding the decision. If this conference fails to satisfy the faculty member, they may request an informal conversation with the President to discuss the matter.

The University President is not obligated to furnish a statement of reasons for not recommending ~~continuanee~~ reappointment of a faculty member ~~for another term during the probationary period~~; however, the President will furnish written reasons for a negative tenure and promotion decisions ~~will be furnished~~ if the faculty member requests them in writing.

V.B. Faculty Complaints:

If a faculty member has been denied continuance, tenure, and/or promotion, then they may submit a written complaint to the President in which they submit evidence that the negative decision was arbitrary or capricious, violated standards of academic freedom, or was based on considerations that violate constitutionally protected rights or interests (e.g., considerations of race, sex, national origin, exercise of free speech, association, etc.)

- The written complaint should be signed and sent to the President within thirty days after the receipt of official notice of the President's negative recommendation. The department head, the dean, and the Provost should be copied in the correspondence.
- As part of the written complaint, complainants must indicate that University personnel may present information related to the decision to members of the Advisory and/or Ad Hoc Committees on Faculty Continuance, Promotion and Tenure and that these committees may review documents related to the person's continuance, tenure, and/or promotion.

Within 10 days of ~~the filing of a complaint by a faculty member regarding a negative recommendation on continuance, promotion and/or tenure,~~ receiving a complaint, the President may:

- send it to the Advisory Committee on Continuance, Tenure, and Promotion to seek to settle the matter by preliminary inquiry, consultation, discussion, and confidential mediation; or
- send it directly to the Ad Hoc Committee on Continuance, Tenure, and Promotion to recommend to the President acceptance or rejection of the complaint.

~~cause the complaint to be set for formal evidentiary hearing by the Ad Hoc Committee and notify the complainant of the hearing. As an alternative, the President may refer the complaint to the Advisory Committee on Faculty Continuance, Promotion and Tenure for preliminary inquiry, consultation, and its reasoned advice and recommendation, and shall inform the complainant of such a referral. The Committee will seek to settle the matter by preliminary inquiry, consultation, discussion, and confidential mediation.~~

The President will designate a Process Manager, usually an associate/vice provost, to oversee the processes on their behalf, to facilitate committee formation with Faculty Senate, to gather information for committees, to liaise with relevant parties, and to manage logistics.

The University ~~appeals~~ complaint process must continue even if outside legal action is undertaken by the faculty member filing a complaint.

V.C. Process for Faculty Complaint, Continuance, Tenure, and/or Promotion

V.C.1. Creation of Selection Pool for the Advisory Committee on Faculty Continuance, Tenure, and Promotion and Ad Hoc Committee on Continuance, Tenure, and Promotion

~~V.A.—Advisory Committee on Faculty Continuance, Promotion and Tenure:~~

By November 1 of every odd numbered year, the Senate Executive Committee will constitute a pool of candidates eligible to serve on the Advisory Committee on Continuance, Tenure, and Promotion and the Ad Hoc Committee on Continuance, Tenure, and Promotion. ~~The President is authorized to establish an Advisory Committee on Faculty Continuance, Promotion and Tenure. It shall be comprised of eligible~~ Tenured faculty members assigned to full-time teaching, research and/or academic service duties (with the exception of ~~other than~~ the fFaculty rRegent); are eligible to serve and are ~~to be~~ selected as follows:

- On or before October 1 of each odd-numbered year, the Vice Chair of Faculty Senate shall ask all academic departments to elect a nominee.
- By November 1st of that year ~~Every two years~~, each academic department shall elect one eligible faculty member.
- As stipulated in the Senate Charter (IV.F.1), ~~N~~ominees shall be elected by secret ballot by all members of the faculty unit holding academic rank as defined in ~~this~~ the Faculty Handbook.
- ~~The election of nominees shall be conducted under the rules and procedures developed by the University Senate.~~
- Persons elected as nominees ~~eligible for appointment~~ shall remain in the pool ~~on the eligible list~~ for a period of two academic years, and may be re-elected.

V.C.2 Formation of the Advisory Committee on Continuance, Tenure, and Promotion

The committee shall be a standing committee consisting of five (5) tenured faculty members. At the November Senate Executive meeting, the Vice Chair of Faculty Senate will select the committee annually from the pool by lot. ~~Membership on the committee shall be selected annually from the list by lot by the University Senate~~

~~Chair during a meeting of the Senate Executive Committee.~~

When the President calls the Advisory Committee to service, the Process Manager and Vice Chair of Senate will recuse members from any case involving complainants from their department and ask members who deem themselves disqualified because of bias or interest to recuse themselves. Recused members will be replaced by drawing lots from the selection pool. Next, the complainant and then the Provost (or the Provost's designee who may not also be the Process Manager) shall have a maximum of two (2) challenges without stated cause. The President's Process Manager and Vice Chair of Senate will draw from the selection pool to fill seats vacated by challenges. If either party has remaining challenges they wish to exercise as alternates are added, they may do so. Draws from the selection pool will continue until membership is finalized.

~~Faculty members shall not participate in a case involving a faculty member from the same department, and members chosen shall remove themselves on their own initiative if they deem themselves disqualified because of bias or interest. In addition, each party shall have a maximum of two challenges without stated cause. Supplementary selections and lists shall proceed in the same manner until an accepted committee is constituted.~~

~~The committee shall designate one member as chair.~~

V.B. — Faculty Complaint:

~~Upon the filing of a complaint by a faculty member regarding a negative recommendation on continuance, promotion and/or tenure, the President may cause the complaint to be set for formal evidentiary hearing by the Ad Hoc Committee and notify the complainant of the hearing. As an alternative, the President may refer the complaint to the Advisory Committee on Faculty Continuance, Promotion and Tenure for preliminary inquiry, consultation, and its reasoned advice and recommendation, and shall inform the complainant of such a referral. The Committee will seek to settle the matter by preliminary inquiry, consultation, discussion, and confidential mediation.~~

~~If the difficulty is unresolved informally within three weeks from the receipt of the complaint, the Committee shall furnish the President and the complainant with a written report containing its advice and recommendations as to whether or not the President should cause the matter to be set for formal evidentiary hearing by the Ad Hoc Committee. The report shall include a statement of the Committee's specific reasons in support of its advice and recommendation. A copy of the proceedings must be sent to the complainant.~~

V.C.2.a. Work of the Advisory Committee

The President charges the Advisory Committee to seek to settle the matter by preliminary inquiry, consultation, discussion, and confidential mediation. The Advisory Committee may communicate with any relevant party, individually and/or in groups, and seek written documents related to the matter. The Process Manager facilitates information gathering and consultation on behalf of the Advisory Committee.

The Process Manager will call the first Advisory Committee meeting to brief committee members regarding the faculty complaint. During this first meeting, committee members will elect a chair and formulate a course of action including but not limited to date/times of future meetings and identify documents committee members would like to review. The Process Manager will retrieve requested documents from the complainant and others on behalf of the committee. Committee members will meet to discuss the faculty member's complaint and documents provided by all parties. Committee members may request to interview individuals/groups and request additional supporting documents via the Process Manager.

If the matter is resolved informally, the committee will provide the President and complainant with a memo briefly stating the resolution. If the difficulty is unresolved informally within three weeks from the Committee's receipt of the complaint, the Committee shall furnish the President and the complainant with a written report containing its reasoned advice and recommendation as to whether or not the President should cause the matter to be set for formal evidentiary hearing by the Ad Hoc Committee. The report shall include a statement of the Committee's specific reasons in support of its advice and recommendation. ~~A copy of the proceedings must be sent to the complainant~~ Note: the three weeks will exclude weeks when the University is closed.

V.C.2.b The President

Based on the Advisory Committee's advice, the President may refer the matter to the Ad Hoc Committee or close the matter. The President will notify the complainant and the Committee of the decision in writing.

V.C.3 Calling and Formation of the Ad Hoc Committee on Continuance, Tenure and Promotion Promotion and Tenure:

The President may call for the establishment of an Ad Hoc Committee under two circumstances. The President may send a complaint to an Ad Hoc Committee on the advice of the Advisory Committee (see Section V.D.2). Alternatively, the President may choose to send a complaint directly to an Ad Hoc Committee after they receive a complaint, bypassing review by the Advisory Committee. When the President calls the Ad Hoc into service, they will designate a Process Manager (see V.B) and ask the Provost to select an appropriate person (typically the complainant's Dean) to serve as the University's Representative at the hearing; this person may not also be the Process Manager.

~~Upon the recommendation of the Advisory Committee on Continuance, Promotion and Tenure, the President shall cause the matter to be heard by an ad hoc committee.~~

~~The faculty member making the complaint herein is responsible for stating the specific grounds upon which the allegation is based and the burden of proof shall rest upon the complainant.~~

Excluding any members from the Advisory Committee who may have worked on this case and excluding any members of the complainant's academic department, the Faculty Senate Vice Chair, Faculty Senate Chair, and the President's Process Manager shall draw by lot five nominees from the list of eligible individuals provided for in Section V.C. The Process Manager will contact the five nominees to learn if any deem themselves disqualified because of bias or interest; recused nominees will be replaced in the order they were drawn. Once the preliminary nominees are selected, the complainant and then the University's Representative shall have a maximum of two (2) challenges without stated cause. The President's Process Manager and Vice Chair of Senate will draw from the selection pool to fill seats vacated by challenges. Once membership is finalized, the Process Manager will convene the Ad Hoc Committee to elect a chair.

~~The ad hoc committee shall consist of five members chosen by lot by the University Senate Chair during a meeting of the Senate Executive Committee from the list of eligible individuals provided for in Section V.A. In addition, two alternates will be selected by lot by the University Senate Chair during a meeting of the Senate Executive Committee to substitute for any Ad Hoc Committee members who remove themselves if they deem themselves disqualified because of bias or interest. The alternates may not be from the same department as any of the five Ad Hoc Committee members. None of the members will have served on the Advisory Committee that had earlier heard the case. In addition, each party shall have a maximum of two challenges with or without stated cause. If the list shall be exhausted before an acceptable committee has been obtained, supplementary list selections will be made following the initial procedure. The committee shall select its chair. The committee will adhere to the following procedures:~~

V.C.3.a. Work of an Ad Hoc Committee

A faculty member's original written complaint to the President serves as the basis for inquiry. Complainants ~~The faculty member making the complaint herein is~~ are responsible for stating the specific grounds upon which the ~~allegations are~~ is based, and the burden of proof shall rest upon the complainant. As noted in Section IV.C.3., complaints must be based on factual information as grounds upon which complainants claim that

- the negative decision was arbitrary or capricious,
- violated standards of academic freedom, or
- was based on considerations that violate constitutionally protected rights or interests (e.g., consideration of race, sex, national origin, exercise of free speech, association, etc.).

The Committee will adhere to the following procedures:

- The **faculty member complainant** will be afforded an opportunity to obtain necessary witnesses and documentary or other evidence; and the **University Process Manager** will, insofar as it is possible for ~~it~~ **them** to do so, secure the cooperation of such witnesses and make available necessary documents and other evidence within its control.
- The Committee will develop a draft agenda in advance of the hearing, the Process Manager and Chair will share it with the complainant and the University Representative for feedback, and the Committee will approve the final agenda based on the feedback.
- The **faculty member complainant** and the University **Representative** will have the right to confront and cross-examine all witnesses. Where the witness cannot or will not appear but the committee determines that the interests of justice require admission of his/her statement, the committee will identify the witness, disclose his/her statement and if possible provide for written interrogatories.
- The **hearing Ad Hoc Committee** will not be bound by strict rules of legal evidence and may admit any evidence which is of probative value in determining the issues involved. Every possible effort will be made to obtain the most reliable evidence available.
- Although both parties may seek outside advice as needed, neither will be formally represented by legal counsel in these hearings. **Only the committee, the Process Manager, the complainant, and the University Representative will be present for the entire hearing.**
- The **hearing Ad Hoc Committee** will grant adjournments to enable either party to investigate evidence as to which a valid claim of surprise is made.
- The findings of fact and the decision will be based on the **hearing record, which will include** documentary evidence submitted by the faculty member and the University as well as testimony by witnesses during the Committee's proceedings. **No transcript or recording of the hearing will be made. When the Committee begins deliberations, they may seek clarification of information presented during the hearing, but they may not seek additional information not part of the record. All deliberations, evidence, and testimony will remain confidential.**
- Except for such simple announcements as may be required covering the time of the hearing and similar matters, public statements and publicity about the case by either the faculty member or the University representatives will be avoided so far as possible until the proceedings have been completed, including consideration by the Board of Regents.
- Upon conclusion of the hearing, the committee must accept or reject the complaint by the faculty member. The Ad Hoc Committee must make a written recommendation to the President. **The recommendation will include a summary of meeting dates, witnesses interviewed, documents reviewed, considerations, and vote count. The Committee's written recommendation will be shared with the complainant and the University Representative as part of the President's decision.**

V.D.C.3.b The President:

The President must accept, reject or revise the recommendations of the Ad Hoc Committee and inform the Committee, **and the complainant, and University Representative** in writing of the decision. The President must submit the President's recommendations and the Committee's recommendations to the Board of Regents.

V.E. The Board of Regents:

The Board of Regents is charged with accepting or rejecting the recommendation of the President. The Board of Regent's decision is final.

Rationale for amendment:

1. Added introductory paragraphs adapted from IV.C.1 Non-Continuance or Negative Tenure Recommendations, IV.C.2. Faculty Complaint, and V.B. Faculty Complaint. Intended to replace deleted paragraphs from those sections. All actions available to a faculty member following a negative continuance, tenure, or promotion recommendation from the President are now in one place (V.A. & V.B.).
2. Specified that written explanation of negative decisions should come from the President (instead of “the University”) (V.A)
3. Created role of Process Manager (V.B)
4. Clarified process by which committee members are chosen and may be disqualified. Eliminated “alternates” pool. Alternates can be drawn from entire selection pool (V.C.)
5. Added paragraph delineating the work process and duties of the Advisory Committee (V.C.2.a.)
6. Created the role of University Representative and specified that this is typically the Dean of the complainant’s college (V.C.3)
7. Eliminated references to “the hearing record.” This was confusing as no recording or written record is kept. Added stipulation that all deliberations, evidence, and testimony will remain confidential. Added stipulation that the committee’s written recommendation should include a summary of meeting dates, witnesses interviewed, documents reviewed, considerations, and vote count. (V.C.3)