

# Office of Academic Affairs

## Policies and Procedures Handbook: Volume 1

### Chapter 3: Appeals

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## **1.0 Promotion and tenure and probationary renewal appeals**

Revised: 07/08/11

Edited: 07/08/11

Only the candidate may appeal a negative tenure, promotion, or probationary renewal decision.

Unsolicited commentary by colleagues, students, or others on behalf of a candidate will not be considered at any time during the P&T or probationary renewal review process and will not influence the course of an appeal.

TIU heads, deans, and the provost will normally not discuss a P&T or probationary renewal decision with individuals not party to the decision-making process.

Members of faculty review bodies and administrators are required to exercise professional judgment in considering the evidence material to making a fair determination in a promotion or tenure case. Differences in or disagreements with professional judgments do not provide a valid basis for appealing a negative P&T or probationary renewal decision.

Favorable annual reviews are not a basis for appealing a negative P&T or probationary renewal decision. A favorable annual review during the probationary period serves as the basis for a positive annual reappointment decision but does not imply a commitment to grant tenure. The review for tenure for faculty on the tenure-track and the penultimate year review for clinical or research faculty entails a much weightier decision than the annual review and entails assessment of both cumulative performance and promise for the future. Performance that is adequate for annual reappointment may not be adequate for the granting of tenure (see Faculty Rule 3335-6-05) or securing a reappointment.

### **1.1 Allegation of improper evaluation**

Revised: 05/05/16

Edited: 05/05/16

The primary basis for an appeal of a negative P&T or probationary renewal decision is improper evaluation. Faculty members who believe they have been evaluated improperly may appeal a negative decision. Improper evaluation includes violations of (1) written procedures that could reasonably have affected the outcome of a review and/or (2) failure to consider evidence material to a fair determination.

A formal appeal cannot begin until the provost has rendered a decision, or the dean in the case of clinical and research faculty. However, a candidate may occasionally raise issues about the review process during the review, through the comments process provided for in Faculty Rule 3335-6-04. When appropriate, these issues should be addressed at the time they are raised. The chair may wish to consult with the dean and/or OAA regarding the best ways to address a particular issue.

An appeal alleging improper evaluation is reviewed in accord with procedures described in Faculty Rule 3335-5-05.

All appeals must occur within 30 days of the date of the letter from either the TIU head or dean informing the faculty member of the provost's negative decision, or the dean's negative decision in the case of clinical or research faculty. The faculty member may appeal by sending a written complaint describing the alleged improper evaluation to the chair of the Committee on Academic Freedom and Responsibilities (CAFR), copied to the provost, or the dean in the case of clinical and research, and **should follow up with a phone conversation shall meet** with the chair of CAFR regarding the complaint and next steps.

The faculty member should promptly inform the chair of CAFR and OAA if s/he decides not to pursue the appeal.

### **1.2 Allegation of discrimination**

Revised: 05/05/16

Edited: 05/05/16

An appeal may also be based on the allegation of discrimination. Such an appeal would focus on discrimination based on protected status (see OHR Policy 1.10, <http://hr.osu.edu/policy/>). A complaint alleging discrimination should be presented in writing to the Director of Consulting Services in OHR, with a copy to the provost, within 30 days of the date of the letter from either the TIU head or dean informing the faculty member of the provost's negative decision. OHR shall have the sole discretion for investigating complaints of discrimination. Post HR's decision, the executive Vice President and Provost will take any steps as deemed necessary.

### **1.3 Seventh-Year Reviews**

Revised: 07/26/04

Edited: 08/01/07

In rare instances, a TIU may petition the dean to conduct a Seventh-Year Review for an assistant professor who has been denied promotion and tenure (see Faculty Rule 3335-6-05(B)).

### **2.0 Faculty salary equity appeals process**

Revised: 03/25/04

Edited: 08/04/09

Given the importance of salary to individuals, the fact that funds for salaries are limited, and the fact that in allocating those funds, decision makers must make choices that benefit some more than others, some degree of salary dissatisfaction is unavoidable. Eliminating that dissatisfaction is impossible. However, varying salary levels among individuals should be consistent with differences in the factors that appropriately affect salary.

This appeals process is intended to address only salary appeals that are based on the appellant's belief that his/her salary is lower than comparable faculty within his/her academic unit and that the salary disparity cannot be explained by factors that appropriately affect salary levels.

Subject to OAA approval, department, school, college, and regional campus patterns of administration may contain additional policies pertinent to this process.

### **2.1 Eligibility**

Revised: 03/25/04

Edited: 08/01/07

Faculty who meet all of the following criteria may use this process if:

- they are tenure-track, clinical, or research faculty members
- they do not receive part of their OSU compensation from a health care practice plan
- their salary is 5% or more below the average salary of all other faculty of the same rank in their academic unit or in a recognized discipline or subdiscipline with a distinct salary market within their academic unit (TIU for Columbus faculty; regional campus for regional campus faculty).

There must be at least two such faculty, in addition to the appellant, for these procedures to apply. Further, these faculty members must allege that the salary disparity cannot be accounted for by:

- differences in years of service and years in rank
- productivity in teaching, research, and service
- centrality of the person's work to the academic unit
- past/present administrative duties
- market factors
- other factors set forth as legitimate bases for salary determination in the faculty member's academic unit APT Document or POA or otherwise consistently communicated and applied in hiring and merit salary increase decisions
- three full academic years have passed since a final decision was rendered on a faculty member's previous appeal under this process. For example, if a faculty member uses this process during the academic year 2012-13 and a final decision is rendered in that time period, s/he may not use the process again until the 2016-17 academic year.

This process is not intended to address all bases of dissatisfaction with salary. Faculty with salary concerns who are not eligible for review under this process may seek information about and resolution to their concerns through discussion with the head of their academic unit.

## **2.2 Parties to the appeal process**

Revised: 03/25/04

Edited: 08/01/07

### **2.2.1 Academic unit head**

Revised: 03/25/04

Edited: 08/01/07

For purposes of this process, the academic unit head is the head of the TIU, be that a department, school, or college except in the case of regional campus faculty. The academic unit head for regional campus faculty is the regional campus dean-director.

### **2.2.2 Dean/dean-director**

Revised: 03/25/04

Edited: 08/01/07

The dean of a college, the director of University Libraries, or the dean-director of a regional campus.

### **2.2.3 College faculty salary appeals committee**

Revised: 08/01/07

Edited: 06/15/15

There will be a faculty salary appeals committee at the college level (whether or not the college is a TIU). The committee may exist solely for the purpose of reviewing salary appeals under this process or may be an existing committee (the P&T committee or college investigation committee).

Because a two-level review process (department and college) is not possible for the nine colleges (including the University Libraries) that serve as TIUs, and the academic unit head and dean are the same person in these units, a slight modification of the college faculty salary appeals committee is possible. In these units, the faculty member may select, if s/he wishes, an additional faculty member to serve on the

college committee. This faculty member must be a full-time tenured faculty member from within the college of the appellant and may not be a member of the comparison group.

#### **2.2.4 Regional campus faculty salary appeals committee**

Revised: 03/25/04

Edited: 08/01/07

There will be a faculty salary appeals committee for the regional campuses which shall consist of one faculty member from each regional campus appointed by the dean of that campus. Terms of members shall be four years and initially will be staggered (one year for Lima, two for Mansfield, three for Marion, and four for Newark) to assure continuity of membership. The chair of the committee shall rotate among the campuses in the order of Lima, Mansfield, Marion, and Newark. Reappointment to the committee is possible.

#### **2.3 Time frame for appeal**

Revised: 03/01/12

Edited: 03/01/12

Appeals under these procedures must be initiated no later than September 30 in order to facilitate completion of the review before salary recommendations are made for the next academic year. Every reasonable effort must be made by the parties to the review process to complete consideration of a salary appeal by mid-April of the academic year.

In the event it is not possible to conclude review of an appeal in this time frame, the administrator who makes salary recommendations for the appellant will carry out that role as usual. It will usually be necessary to update appeal materials following the annual raise process since both academic records and salaries included in the original appeal materials will no longer be current.

#### **2.4 College and regional campus salary appeals policies**

Revised: 03/25/04

Edited: 08/01/07

A college (whether it has units or not) or regional campus POA may establish college-wide or regional campus policies for the documentation of salary appeals under this process if the college or regional campus wishes to have such policies. College and regional campus salary appeals policies must be approved by OAA before they are implemented. Colleges and regional campuses may amend these policies as needed subject to approval of OAA.

#### **2.5 Department salary appeals process**

Revised: 03/25/04

Edited: 08/01/07

Except where college-wide standards for documentation of appeals are established, individual department POAs may establish written policies for the documentation of salary appeals under these procedures if departments wish to have such policies. These policies must be approved by the college office and OAA before they can be implemented. Units may amend these policies as needed subject to the required approvals.

#### **2.6 Appellant responsibilities**

Revised: 03/25/04

Edited: 08/01/07

The faculty member using this process bears full responsibility for documenting the appeal.

Documentation must be consistent with any department and college or regional campus written requirements as well as with the eligibility requirements set forth in Section 2.1 of this chapter. Unless department, college, or regional campus POAs specify otherwise, this documentation must consist of a detailed analysis of the appellant's academic record and salary relative to faculty in the comparison group taking into account years of service, years in rank, and other factors that affect salary as noted in Section 2.1 of this chapter. CVs of comparators and salary information are public records and can be requested from the academic unit office.

Unless unit, college, or regional campus POAs specify otherwise, the comparison group must include all other faculty of the same rank in the academic unit (excluding the academic unit head). When an academic unit contains distinct and recognized disciplines or subdisciplines which have different salary markets, the comparison group will be limited to all other faculty of the same rank in appellant's discipline or subdiscipline within the academic unit (excluding the academic unit head).

As noted in Section 2.1 of this chapter, at least two comparators that meet these requirements must exist for this process to be applicable.

The faculty member may, but is not required to, initially present his/her documentation to the chair of the college or regional campus faculty salary appeals committee for informal advice as to whether the appeal, as set forth, appears to meet the eligibility and documentation requirements set forth in this document and in any written academic unit and college salary appeals documents.

The faculty member may then determine whether to proceed with a salary appeal. The salary appeals committee chair shall not express an opinion as to whether the appeal has merit since that judgment cannot be made based only on the appellant's perspective.

The faculty member may appeal to the college or regional campus faculty salary appeals committee if the academic unit head dismisses the appeal or proposes a resolution that is judged to be unsatisfactory by the faculty member.

## **2.7 Academic head responsibilities**

Revised: 02/15/13

Edited: 02/15/13

On receipt of documentation alleging salary inequity from a faculty member, the academic unit head shall review the documentation. The academic unit head may request additional information from the faculty member and/or meet with the faculty member as appropriate.

The academic unit head may dismiss the appeal or propose a salary adjustment (see Section 2.10 of this chapter for required approvals for salary adjustments). Salary adjustments should not be communicated to affected faculty until the required approvals have been obtained.

The academic unit head will respond in writing to the appeal. The response may provide additional analysis, as deemed necessary, and must provide a rationale for the conclusions. The academic unit head will ensure delivery of the final written notice of the disposition of the appeal by also sending an electronic copy to the appellant.

If the academic unit is a TIU within a college, forward to the college office a copy of all written material generated by the appeal for record keeping purposes.

## **2.8 College or regional campus faculty salary appeals committee responsibilities**

Revised: 03/25/04

Edited: 08/01/07

On receipt of an appeal from a faculty member who is dissatisfied with the academic unit head's disposition of that appeal the college or regional campus faculty salary review committee will review the documentation submitted by the faculty member and the written conclusions of the academic unit head in light of the unit's salary criteria.

While the committee may, on occasion, request additional information from either the academic unit head or appellant, and/or meet with parties to the complaint, its review should be based primarily on the appellant's documentation and the academic unit head's response to that documentation. The committee does not develop new documentation. An inadequately documented appeal should be dismissed.

The college or regional campus faculty salary appeals committee may make a recommendation to the dean or dean-director regarding:

- whether a salary adjustment for the appellant is or is not warranted
- an explanation of its conclusions
- if an adjustment is warranted, its approximate amount

The committee's recommendation to the dean or dean-director is advisory.

## **2.9 Dean or dean/director responsibilities**

Revised: 03/25/04

Edited: 08/01/07

On receipt of a recommendation from the college or regional campus faculty committee the dean or dean/director will accept, amend, or reject the faculty committee's recommendation. If the dean/dean-director determines that a salary adjustment shall be made, the dean/dean-director shall determine the amount and the timing of that increase (see Section 2.10 of this chapter).

The dean or dean/director will communicate the final decision to the appellant and to the appellant's academic unit head if that person is different from the dean/dean-director. The dean/dean-director will also communicate to the faculty salary appeals committee the final action taken on a complaint and, if the action differs from the faculty committee's recommendation, the reason for that action.

The dean or dean/director will maintain in the college or regional campus office a record of all appeals, including those dismissed by the academic unit head and not appealed to the college or regional campus faculty committee. Each record should include all written materials developed for and generated by the appeal.

## **2.10 Salary equity adjustments proposed under these procedures**

Revised: 03/25/04

Edited: 08/01/07

Salary equity adjustments proposed as a result of using these procedures should be funded from annual raise monies available during the annual raise cycle to the extent possible. A proposal to provide an equity

salary increase from other academic unit funds, regardless of the proposed timing of the increase, requires the approval of the dean (in colleges with units) and OAA.

### **2.11 Decisions that cannot be appealed**

Revised: 03/25/04

Edited: 08/01/07

A decision is final under these procedures and cannot be appealed when the academic unit head's written conclusions regarding the matter are not appealed to the college or regional campus faculty salary appeals committee within 30 days of the date of the academic unit head's letter to the appellant reporting conclusions; when the dean/dean-director accepts a recommendation of the college or regional campus faculty salary committee to dismiss an appeal; or when the dean/dean-director accepts a recommendation of the college or regional campus faculty salary committee to provide a salary adjustment and offers an adjustment that is at least 75% of the amount recommended by the committee.

### **2.12 Decisions that can be appealed**

Revised: 03/25/04

Edited: 08/01/07

If the dean or dean-director dismisses an appeal that was not dismissed by the faculty committee, or proposes a salary adjustment that is less than 75% of the amount recommended by the faculty committee, the appellant may appeal to the provost. The provost or designee will review the matter and render a final decision.

### **3.0 Complaints against tenure-track, clinical, research, or associated faculty members**

Revised: 08/01/07

Edited: 08/01/07

Faculty Rule 3335-5-04 establishes the procedures for formal complaints against tenure-track, clinical, research, and associated faculty members. This rule also applies to administrators who hold faculty appointments.