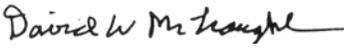




February 9, 2015

Memo to: Ann Marie Mauro
Chairperson, N/C Faculty Senators Council

From: David W. McLaughlin, Provost 

Re: **N/C-FSC Recommendations for Guidelines for Appointment of FTNTT/CF**

Thank you for the recommendations of the Task Force on Review of the Faculty Handbook and Guidelines with respect to the University Guidelines for Appointment of FTNTT/CF.

The guidelines were first drafted by an authoring committee, which I convened in fall 2012, and which primarily consisted of full time non-tenure track contract faculty designated by their deans. In 2013-14, the committee's recommendations were iterated in a consultative process involving the T-FSC and the deans, and were posted in June 2014 as interim Guidelines pending review by the N/C-FSC. In the current round of discussion, I reviewed the November 2014 recommendations of the N/C-FSC, and was also advised of the discussion at the December 9 joint meeting of T-FSC and N/C-FSC representatives with the administration.¹ In December, I also consulted with the Deans.

Based on this iterative process, my office in consultation with the Office of General Counsel (OGC) finalized the amendments to the Guidelines. I am attaching a clean document as well as a redlined copy that tracks changes to the June 2014 document.

The revised Guidelines are effective March 1 and at that time, will be accessible by link from the Faculty Handbook. The June 2014 document will be archived, also at the Faculty Handbook site at <http://www.nyu.edu/faculty/governance-policies-and-procedures/faculty-handbook.html>

I continue to consider these Guidelines to be interim. As part of the next cycle in developing the Guidelines, later this spring, my office and OGC, in consultation with the two faculty senators councils, will review issues that relate to disciplinary procedures for FTNTT/CF and develop the process for FTNTT/CF grievances other than for reappointment and promotion. Until then, the disciplinary procedures and grievance procedures (for grievances other than reappointment and promotion) that apply to all University employees (other than the tenured/tenure track faculty) will apply to FTNTT/CF.

I greatly appreciate the Council's careful review and suggestions for improving the Guidelines. In the following pages I respond to each issue the Council raised in its November memo.

cc: N/C-FSC Steering Committee: Randy Mowry, David Elcott, Mary Killilea, Susan Stehlik, Patrick Ying
N/C-FSC Task Force Co-Chairs: John Halpin and Fred Carl
Carol Morrow, Senior Associate Provost and Chief of Staff to the Provost
Terrance Nolan, General Counsel and Secretary of the University
Raghu Sundaram, T-FSC Chairperson
Karyn Ridder, Manager, Office of Faculty Governance

¹ Meeting participants were Warren Jelinek, Jim Uleman, Mitchell Kane representing T-FSC; John Halpin, Fred Carl, representing N/C-FSC; Terry Nolan, Office of General Counsel; Carol Morrow, Office of the Provost, Peter Gonzalez, Office of the Provost.

**RESPONSE TO N/C-FSC NOVEMBER 2014 RECOMMENDATIONS
ABOUT THE INTERIM JUNE 2014 GUIDELINES**

1. *Introduction, first sentence: Recommendation: Change “represent a distinct and important part...” to “are a distinct and important part....”*

The February Guidelines adopt the recommended language.

2. *II. Formulation of School Policies, Page 1, first sentence: Recommendation: Since the Guidelines are broad enough to allow for the unique cultures of all of the Schools and the two portal campuses, we recommend the following language: “Each school and the two portal campuses are governed by these Guidelines and are required to establish their own policies governing the appointment, review, and reappointment of full-time non-tenure track/contract faculty.” We further recommend changing the language of Footnote 2 to the following: “NYU’s health professional schools (Medicine, Dentistry, and Nursing) and NYU’s portal campuses in Shanghai and Abu Dhabi are expected to embrace the spirit and values reflected in these guidelines, and to adopt policies accordingly.”*

The Guidelines were developed without full participation and consultation with the health professional schools, and with the understanding that the circumstances of FTNTT/CF at these schools differ substantially from circumstances at the majority of NYU schools. As well, the Guidelines specifically exempted the portal campuses: the Guidelines were not developed with the participation of NYU Shanghai and both that campus and NYU Abu Dhabi are still accumulating experience about the practices that work best in their unique circumstances. Nevertheless, as stated in footnote 2, these units are expected to “embrace the spirit and values” of the Guidelines, and develop school policies that are specific to their circumstances. Thus, the existing language is retained.

3. *Participation in School Governance, Page 3. Recommendation: Change the sentence that is paragraph 2 to read: “Schools are expected to include FTNTT/CF on committees, except for those involving tenure decisions or those otherwise set aside by University Bylaws as falling within the exclusive domain of tenured and tenure track faculty.”*

The Guidelines adopt the language “schools are expected” rather than “schools are encouraged.”

4. *Hiring Plan and Process, a. Duration of Contracts, Page 4: Recommendation: Change the last sentence of paragraph 1 to read: “However, in addition to providing schools with an essential degree of flexibility, one-year contracts may be programmatically and academically desirable in a number of schools and academic programs, and, in those cases, should be justified accordingly to the Provost.*

The Guidelines read, “However, in addition to providing schools with an essential degree of flexibility, one-year contracts may be programmatically and academically desirable in a number of schools and academic programs within schools; school policies shall include a rationale for a FTNTT/CF title(s) that carries a one-year appointment.”

5. *Hiring Plan and Process, b. Hiring Practices, Page 4, 3rd sentence: Recommendation: Sentence should read: “Schools are expected to include FTNTT/CF in the hiring process for FTNTT/CF.” [Delete the last sentence—if the expectation is that FTNTT/CF are part of the governance structure of the University and the schools, there should be no instances where FTNTT/CF are precluded from involvement in school procedures.]*

The Guidelines adopt the language “schools are expected” rather than “schools are encouraged.” The Guidelines delete the sentence that reads, “Where governance procedures preclude the involvement of FTNTT/CF in the hiring of full-time contract faculty, schools are encouraged to revise their procedures to allow for meaningful FTNTT/CF involvement” although I believe this sentence served to emphasize the point.

6., V. Grievances Related To Reappointment And Promotion of FTNTT/CF, a. Principles, Page 7, Paragraph 2, Line 4. Recommendation: As a new sentence 3, to go between the existing 2nd and 3rd sentences, add language for school grievance committee formation for cases involving FTNTT/CF that mirrors the language found in the Faculty Handbook, Page 57, #4, with the suggested changes (here in bold): “Each school or faculty shall establish a faculty committee to hear grievance cases in order to advise the dean. This grievance committee shall be elected by the voting members of the faculty and shall be a standing committee of the school or faculty. A majority of the committee shall be senior FTNTT/CF. It shall not include departmental chairpersons or department heads or any faculty member whose primary assignment is administrative.”

NYU has a strong tradition of decentralized school organization and culture. Consistent with this tradition, the Guidelines charge schools to develop detailed school-level policies, and the Guidelines permit each school to best determine whether one committee suffices to review grievances of the TTF and the FTNTT/CF or whether two separate committees are appropriate. NYU also has a strong tradition, and among the tenured/tenure track faculty there is the strong expectation, that the Provost shall consult with the tenured/tenure track faculty on academic matters.

Accordingly, Section V.d. The School Grievance Process, reads, “Each school or faculty shall designate a faculty committee to hear grievances in order to advise the dean. Unless otherwise authorized in the school’s policy and approved by the Provost, each school shall either establish a new standing faculty committee for FTNTT/CF grievances, which will include senior FTNTT/CF and TT/TF elected by the voting members of the faculty; or shall expand its existing standing grievance committee for TT/TF to include (elected) senior FTNTT/CF who shall participate in hearing and evaluating only those grievances that are filed by FTNTT/CF. The faculty grievance committee(s) shall not include departmental chairpersons or department heads or any faculty member whose primary assignment is administrative.”

7. V. Grievances Related to Reappointment and Promotion of FTNTT/CF, c. Who Can Grieve, Page 8. Recommendation: This section refers explicitly to FTNTT/CF grievances related to reappointment and promotion; however, it does not provide for any situation of a faculty member whose contract is not renewable filing a grievance for a violation of academic freedom, assuming that said grievance is compelling. Language protecting the faculty member in that case should be included.

Grieving for a violation of academic freedom falls in the category of grievances concerned with matters other than reappointment and promotion. These are issues that will be addressed in the next cycle of developing the Guidelines.

8.V.e. Appeal from a Dean’s Decision on Appointment, Reappointment, or Promotion, Page 9, Recommendation: Appeals from a dean’s decision for FTNTT/CF should mirror those set forth for TTF, again following a principle of parallelism referred to in Handbook Recommendations, #10, first paragraph.

The seven recommendations of the N/C-FSC are embedded below, along with my response to each. A number of recommendations align the appeals process for FTNTT/CF with the processes that exist for TT/TF. The process that applies to faculty who are protected by (the potential for) indefinite employment does not anticipate that this process applies to faculty who are protected by contract terms. Thus, while some provisions are appropriate for FTNTT/CF, others are not appropriate, as discussed below.

As is the case for TT/TF, grievants must be faculty members at NYU when they initiate the appellate grievance procedure. Thus, Section V. Grievances Related to Reappointment and Promotion includes the following note: “The purpose of these Guidelines is to establish University procedures by means of which FTNTT/CF can seek redress of their grievances. A grievant must be a faculty member of New York University when he or she initiates the appellate grievance procedure under Section V.e. Appeal from a Dean’s Decision on Reappointment and Promotion.”

Recommendation 1. Amend the Guidelines to read, “A faculty member intending to make an appeal shall indicate such intention in writing to the Provost within 15 days after receiving written notification of the dean’s decision. An exception to this may be made only with the consent of the grievant, the dean, and the Provost.”

The TT/TF grievance process provides that appellants ‘submit such intention in writing.’ As a matter of course, TT/TF appellants submit a full appeal that specifies grounds for and materials in support of the appeal. We have no historic record of an intent to appeal that does not provide the substance of the appeal itself. Thus, when the grievance processes for FTNTT/CF were formulated, they were written to reflect experience and practice. The Guidelines adopt the suggestion to reference exceptions to the 15 day rule. Thus, the Guidelines read, “A faculty member intending to make such an appeal shall indicate such intention in writing to the Provost, specifying all grounds for and materials in support of the appeal within 15 days after receiving written notification of the dean’s decision. An exception to this may be made only with the consent of the grievant, the dean, and the Provost.”

Recommendation 2. Revise the Guidelines to read, “Where such an appeal is made, the dean shall transmit to the Provost a report of the proceedings in the case at its earlier stages. The Provost shall in each case obtain the advice of an advisory committee drawn from a larger standing committee selected by the Full-Time Non-Tenure Track/Contract Faculty Council but not necessarily members of that body; the advisory committee shall consist of no less than three senior FTNTT/CF faculty members, at least two of whom are not from the grievant’s school. This advisory committee shall be called the Full-Time Non-Tenure Track/Contract Faculty Council Grievance Committee.”

As noted above with respect to the school grievance committee and now with respect to the grievance appeal committee, NYU TT/TF have a strong tradition and expectation of being consulted on academic matters. And, it is the tradition, responsibility, and privilege of the Provost as Chief Academic Officer to seek the advice of the senior tenured faculty. The principle of FTNTT/CF participation in FTNTT/CF grievance appeals is also a strong principle. Accordingly, the Guidelines provide for a standing committee that includes not only senior FTNTT/CF but also tenured faculty; and an advisory committee whose majority is selected by the FTNTT/CF.

The Guidelines provide, “The Provost shall in each case obtain the advice of an advisory committee, drawn from a standing committee that shall consist of the members of the N/C-FSC Grievance Committee and the T-FSC Grievance Committee; in each case committee members shall be selected by the relevant faculty senators council but need not necessarily be members of the particular council. The FTNTT/CF Grievance Advisory Committee shall consist of three members, none of whom are from the grievant’s school: one faculty member drawn from the N/C-FSC standing committee, one faculty member drawn from the T-FSC standing committee, and one senior administrator selected by the Steering Committee of the N/C-FSC.”

Recommendation 3. Amend the Guidelines to read, “The Full-Time Non-Tenure Track/Contract Faculty Council Grievance Committee shall hold a hearing and shall complete its deliberations and notify the Provost of its recommendations, preferably within 30 days of the close of the hearing, but in any case within 60 days.”

This recommendation is to align the format of the language with the process for TT/TF. The Guidelines adopt the recommended language.

Recommendation 4. Amend the Guidelines to read, “The Full-Time Non-Tenure Track/Contract Faculty Council Grievance Committee shall not judge professional merits, but only ascertain whether procedural safeguards have been observed. Evidence that a decision appealed is so arbitrary that it has no rational foundation may be considered on the issue of “inadequate consideration” (that the decisions violated the academic freedom of the faculty member in question, in which case the burden of proof falls to the grievant).”

The reference to “inadequate consideration” explicitly tracks in the TT/TF grievance procedures to paragraph B-1-a, which permits appeals on the grounds “that the procedures used to reach the decision were improper, or that the case received inadequate consideration.” Inadequate consideration does not refer to violations of academic freedom. The Guidelines explicitly permit appeals of reappointment and promotion decisions on the grounds “that the decisions violated the academic freedom of the person in question, in which case the burden of proof is on that person.” Accordingly, existing language is retained.

Recommendation 5. Amend the Guidelines to add language to read, “The Full-Time Non-Tenure Track/Contract Faculty Council Grievance Committee shall at all times follow the requisites of a fair and equitable hearing, but it is not to be restricted by the technical rules of evidence or the formality of the adversary proceeding as in a court trial. In each case the Committee shall determine its own procedure, adapting the requirements of the particular case to the equity of the situation. This shall include, for example, the question of a record of the hearing, the examination of witnesses, the schedule and public nature of meetings, etc. The grievant, however, may determine whether he or she shall have the aid of an advisor or counsel.”

The Guidelines adopt the recommended language.

Recommendation 6. Amend the Guidelines to read, “After receiving the advice of the Full-Time Non-Tenure Track/Contract Faculty Council Committee, the Provost shall decide the case and notify the grievant, the dean, and the Chairperson of the Full-Time Non-Tenure Track/Contract Faculty Council Committee. If the advice of the latter is not followed, the reasons shall be reported with the decision.”

The Guidelines provide that Provost shall notify the chair of the advisory appeals committee of his/her decision and provide reasons when the advice of the committee is not followed. It is the case that the Provost’s decision is final, which is also the case with TT/TF appellants. Accordingly, the Guidelines read, “After receiving the advice of the FTNTT/CF Grievance Advisory Committee the Provost shall decide the case, and notify the grievant, the dean, and the Chairperson of the FTNTT/CF Grievance Advisory Committee. If the advice of the latter is not followed, the reasons shall be reported with the decision. The Provost’s decision is final and subject to no further review.”

Recommendation 7. Amend the Guidelines to add language to read, “If the dean’s decision is favorable to the faculty member and hence is not appealed and Provost reverses that decision without seeking the advice of the Full-Time Non-Tenure Track/Contract Faculty Council Grievance Committee as described above, the faculty member may then invoke the appeal procedure.”

This recommendation is to align the FTNTT/CF process with the TT/T process. This provision applies to tenure decisions; it does not apply to FTNTT/CF.

Additional Amendments

Additional amendments to the Guidelines were made to clarify intent and include the following:

- Section I, II. The enumeration of University commitment to excellence adds *artistic achievement*.
- Section IV, Reappointment and Promotion a. Eligibility and Criteria for Reappointment and Promotion, paragraph 2, reorders the sequence of sentences and clarifies the intent. The text (showing new language in italics) reads, “Each school shall establish clear processes for reappointment and promotion. Each school shall set exacting standards embodying the highest levels of achievement *that ensure the distinct excellence of the school’s educational and training programs. Review for reappointment and promotion shall consider curricular and structural changes and improvements in academic programs.* Even in those cases in which a candidate satisfies the appropriate standards of achievement, the decision to

reappoint or promote may be impacted by curricular and structural changes and improvements in academic programs

- Section V.b. Grievances Related to Reappointment and Promotions, adds this text: *A school's decision to not undertake the reappointment process where a position is to be eliminated at the end of the contract term and there is no similar position open is not the basis for a grievance.* This language is consistent with the text in section IVa. Eligibility and Criteria for Reappointment and Promotion, third paragraph.
- Section V.c. Who Can Grieve, clarifies that faculty are entitled to grieve in the event they are denied reappointment without review *for reasons other than elimination of the position*. This section also clarifies that faculty on one-year or two-year contracts “are entitled to grieve the process in the event they are not reappointed *after a third year review* when a review had been explicitly promised in connection with the possibility of reappointment subject to it” etc.