MINUTES OF THE T-FACULTY SENATORS COUNCIL MEETING OF NOVEMBER 19, 2020

The New York University Tenured/Tenure Track Faculty Senators Council (T-FSC) met at noon on Thursday, November 19, 2020 via Zoom.

In attendance were Senators Amin, Battista, Cappell, Coslovsky, Das, De Leon, Dreyfuss, Duncombe, Economides, Fenton, Ghose, Gyorgy, Hartman, Hoffman, Irving, Kamer, Lapiner, Ling, Makarov, Merritt, Mincer, Nonken, Parekh, Pursley, Quinn, Schlick, Sternhell, Stimpfel, Upham, Young, Zelikoff; Active Alternates Cole; and Alternate Senators Gilchrist, Gillers, Gunsalus, Jassen, Ogrodnik, Rock, Schuman (for Chen), and VanCleave; and Observer Miao.

APPROVAL OF THE MINUTES

Upon a motion duly made and seconded, the minutes of the October 22, 2020 meeting were approved unanimously.

ANNOUNCEMENT OF LIST OF CANDIDATES

Candidates for T-FSC Chairperson 2020-2021

The Nominating Committee announced the list of candidates includes current Chair Darcey Merritt, and called for additional nominations for the second candidate on the slate. The election will take place at the December meeting.

REPORT FROM THE CHAIRPERSON

Vice Chairperson Irving offered the Chair’s report on behalf of Chairperson Merritt.

He reported the Executive Committee has participated in several recent meetings with senior leadership. At one of the meetings, Linda Mills discussed the push for improved student mental health services. This includes lifting the 10-session limit on student therapy and setting up more immediate sessions during the wait time to book a therapist.

Irving noted the recent communications from the President’s Office on the revised spring calendar, which adds long weekends to replace the spring break that is cancelled due to public health concerns. It was noted it is expected that faculty would treat these long weekends as they would spring break and avoid assigning extra work to be completed over the 3-day weekends in order to offer a break and support the mental health of the community.

Regarding Title IX, the new regulations that went into effect in August are being adhered to by the Office of Equal Opportunity. As of this meeting, no cases have been brought forward.

Irving reported on the cancelling of a NYU Zoom event on censorship, which Zoom considered to be in violation of Federal law. The webinar was scheduled to discuss the censorship by Zoom and other big tech platforms of an open classroom session last month at SFSU featuring the Palestinian rights advocate Leila Khaled. A Senator provided a link to the AAUP letter to President Hamilton regarding the incident.
The Office of the Provost is looking at myriad scenarios for classroom hybrid and remote teaching for the 2021 spring semester. Solutions are not one size fit all, but rather should be determined by individual schools.

Vice Provost for Educational Technologies Clay Shirky and his team are examining the issue of post-COVID remote education.

The President’s Office is setting up a vaccine distribution task force. Once a safe vaccine has been developed, a plan will be devised on vaccinating the NYU community.

PRESENTATION, DISCUSSION, AND VOTE

Joint T-FSC and C-FSC Resolution on Anti-Racist Education

See attached Document A.

Committee Co-Chair Nonken presented on the joint resolution co-authored by the ad hoc committee of the T-FSC and C-FSC. The members of this committee include Gay Abel-Bey, Sonia Das (Chair), Lauren Davis, Andre Fenton, Marilyn Nonken, and Maria Patterson.

Nonken reported in October 2018, the Being@NYU Survey identified communities of students, faculty, and staff who indicated that they had experienced exclusionary, intimidating, offensive, and/or hostile conduct on campus, specifically based on their ethnicity.

She provided a link to the Executive Synopsis of the Survey.

The Executive Summary concluded that “At a minimum, the results add empirical data to the current knowledge base and provide more information on the experiences and perceptions for several sub-populations within the NYU community. However, assessments and reports are not enough. A projected process to develop strategic actions and a subsequent implementation plan are critical to improving the campus climate.” (Executive Synopsis, p. 32).

In April 2019, in response, the T-FSC overwhelmingly passed a Resolution: Education Against Racism at NYU.

This Resolution resolved that New York University will undertake providing anti-racism education for its faculty, students, staff, and administrators; that NYU designate support and resources to provide assessment, oversight, and anti-racism education in all Schools and departments, and promote actions to empower those students of color who bear the brunt of discrimination; and that NYU institute yearly evaluations of anti-racism practices across all Schools, faculty, students, staff, and administrators.

In May 2020, President Hamilton and Lisa Coleman, Senior Vice President for Global Inclusion, Diversity, and Strategic Innovation and NYU’s inaugural Chief Diversity Officer (hired in 2017), issued a joint statement in response to a racist incident which took place at NYU:

“At a time when we are challenged and should be standing united against a new plague, the coronavirus, we continue to have to battle another ancient plague that seeks to divide us: racism, bigotry, and hatred across the United States. So, we were especially troubled and disappointed by a set of Instagram posts that appear to have emanated from members of the NYU chapter of a national fraternity. The sentiments expressed in these posts are abhorrent, at odds with our community’s
values, and counter to the inclusive community we seek to create for everyone at NYU … The fact that such an egregious incident happened within our own community is a painful reminder of the pervasive nature of the scourge of racism.”

Nonken reported she and Chairperson Merritt met yesterday with William Berkley and members of the Board of Trustees, for whom diversity in the student body and faculty, as well as the challenges that face our University in creating an equitable, accessible, diverse environment, is a concern. This June 2020, Berkley and President Hamilton issued a statement to the NYU Community, “Needed Change, Needed Action,” quoting NYU Professor Bryan Stevenson: “We are all implicated when we allow other people to be mistreated.”

Committee Co-Chair Das recognized the outstanding work of the Office of Global Inclusion, Diversity, and Strategic Innovation, including providing new educational resources, meetings and training sessions, and special events to raise issues related to racism and anti-racism activism within University. She noted the Committee recognized the need for resources to be put in place now, while the Office and administration takes time to develop resources. The Committee found a list of resources that could be adapted to meet the needs of NYU.

She commented that any attempts to delay a vote on this resolution would be a repudiation of the University's own admission of the problem of racism from the President to the Board of Trustees. It would also repudiate the results of the Being@NYU survey. She noted the resolution is a result of more than three years of collaboration across all levels of university governance.

Senators expressed concerns regarding the potential for lawsuits by including clauses that characterize the University as racist.

A Senator also expressed concern with the pledge: “I will be brave enough to have uncomfortable conversations and take action against racism at NYU” noting it could open up justification for firing faculty if they are found not in compliance with this pledge.

A Committee member noted the resolution does not state that adding this pledge is mandated, instead the resolution proposes that faculty members use the pledge in their signature blocks. A Senator expressed concerns creating divisions within the faculty based on the decision to include or not include this pledge.

A Senator stated there is a need to implement anti-racist education in order to address issues of recruitment, retention, and accountability. Denying a problem exists is a denial of the experiences of people who are marginalized.

In response to legal concerns, Nonken noted the language in the resolution was reviewed by the General Counsel.

The joint resolution co-authored by the ad hoc committee of the T-FSC and C-FSC, was approved by vote of the Council.

PPTM Review of Grossman School of Medicine's Proposed New Policies

See attached Document B.

The PPTM Committee reviewed the proposal from the Grossman School of Medicine (GSOM) to adjust their Tenure and Promotions guidelines, regarding 1) Termination of Tenure for Cause, 2) Termination of Tenure-Track Appointments for Cause, and 3) Other Disciplinary Proceedings for Tenured and Tenure-Track Faculty.

Committee Co-Chair Lapiner noted they found the policy to be controversial and the method in which it was developed a source of concern. The review details concern regarding the protocols,
process, and policy, and states the Council is unable to support the proposed policies submitted for review.

He noted the Committee’s memo is in two parts. The first is to explain the context of the transmittal and the second part is the commentary, which explains the Committee’s view regarding the policies and how they might be amended.

The Committee reported the medical school dealt with some exceptionally egregious cases of faculty misconduct last year. As a result, the GSOM undertook the process of adjusting these policies regarding dismissal for cause, as well as how to deal with infractions that do not arise to the level of meriting a consideration for dismissal and loss of tenure.

In terms of process, the school administration went before the Faculty Council of the GSOM with a draft proposal which had been developed by the Office of Academic Affairs. The Faculty Council provided some modest revisions, and it was put to a vote of the Council and passed by a large majority. The Council was comprised of representatives of the T-faculty as well as C-faculty, which make up the vast majority.

The Provost at the October 22 T-FSC meeting affirmed correctly that the vote was conducted in accordance with the school’s by-laws. However, the Committee is concerned there might be an unintended but potentially highly problematic precedent for the university as a whole in authorizing C-faculty to vote on matters governing the tenure rights and tenure removal of T-faculty. That authority seems to be in clear opposition to the language of the Faculty Handbook.

Senators discussed support of the statement in the recommendation regarding escrow of salary during the duration of the deliberative process.

Senators expressed concern with non-tenured faculty members voting on tenure issues and the conflict with the current policy in the Faculty Handbook. Council members supported that the existing guidelines apply for all schools. Senators discussed threats to tenure.

The recommendations were approved by vote of the Council.

Resolution for NYU to Adopt an Open Access Policy

See attached Document C.

This discussion was moved to the December meeting.

COMMITTEE REPORTS

See attached Document D.

Reports at Meeting:

Finance & Policy Planning

Senate Financial Affairs Report (SFAC) Report

Committee Co-Chair Economides reported the SFAC met on 11/17/20. Vice Provost Tony Jiga made two presentations. The first was on pay equity analysis to find out whether there are inequalities in pay for women and minorities. The second was on faculty salary inversion, to find out whether higher ranked faculty are paid less than lower ranked faculty.
The first study was done by Charles River Associates (CRA). However, the Committee was not shown the results of the study but rather a slide deck for faculty, which Mr. Jiga said was the whole study. Moreover, Mr. Jiga explained that the results presented were not the results of the CRA study but rather an evaluation of the results by the law firm Orrick that was hired by NYU to do this evaluation.

The study attempted to evaluate the impact of gender and/or race/ethnicity on salary. It also included variables such as (i) primary job profile; (ii) on-primary job profile, when paid an administrative supplement; (iii) department; (iv) time at NYU; (v) prior experience; and (vi) whether the faculty holds a doctorate degree or terminal degree. It seems that the CRA study created salary predictions based on a gender/race-neutral model and compared them with actual salaries. This was done NYU-wide as well as within each School.

Orrick concluded that the CRA model “did not reveal any systemic disparities based on gender or race/ethnicity.” However, “select Schools were identified for further review for gender based on the initial findings of the model.”

A fundamental issue with this conclusion is that Mr. Jiga was unable to define the term “systemic disparities.” Many in the meeting felt that after a multi-year study, there was not much tangible substance in the report, which was just a summary prepared by lawyers. There were many questions asked of Mr. Jiga in the meeting and more are being gathered. A key request is to receive the full CRA report so that it can be evaluated in terms of its scientific merits. A key complaint was that the faculty did not have input in the parameters of the study. Mr. Jiga will return to participate in the February meeting.

The second study was on faculty salary inversion. This study was done internally by the Provost’s Office. Despite earlier indications that the study was finished, Mr. Jiga indicated that study is not complete, and promised to complete the study and report on it by February of next year. Under next steps, he indicated that they include (i) provide department-level data to deans; and (ii) establish University-wide parameters for evaluating cases of inversion and determining when compensation adjustments would be appropriate. The last bullet point indicates that NYU may not make compensation adjustments when inversion is found but only when appropriate.

Retirement Committee Report

Economides reported the Committee met twice this semester. The first meeting was attended by Alternate Senator Seamans and Economides attended the second meeting on October 28. The key news to report from this meeting is that NYU will move forward in the Spring semester with a reduction of the number and re-alignment of the mutual funds that will be available to NYU faculty under the retirement programs of Washington Square, the Dental School, and Langone SOM. The new program will be available in fall 2021. Besides the funds offered within TIAA, there will be a third-party brokerage company where faculty could invest in many mutual funds not available through TIAA. The final terms of the array of funds available through the third-party brokerage company as well as its commissions and fees for investments have not yet been determined yet, so it is difficult to estimate the importance of that facility.

He stated he asked about the request that information sector mutual funds become available through the TIAA NYU program. The Council had presented evidence that the standard passive large cap Vanguard fund in information technology (that includes Apple, Google, Facebook, Microsoft, Visa, MasterCard, and others) had an 80% higher return for the last 5 years than the best performing growth fund available at TIAA NYU, and therefore it was an excellent idea to include it in the offerings of TIAA NYU. Unfortunately, the retirement committee decided not to include any sectoral funds, thereby excluding information technology mutual funds. He noted that in his opinion this is an error, because the 4th industrial revolution is in information technology and not all sectors of the economy, and therefore on average, information sectoral funds will perform better than the rest of the economy, as they have for a decade. However, because of our observer status in the retirement committee, the faculty representatives could not vote on this issue.
Senate Committee on Organization and Governance: University Senate composition update

The discussion was moved to the December meeting.

**No Discussion/Questions on the following submitted reports:**

Educational Policies & Faculty/Student Relations  
Personnel Policies & Tenure Modifications  
Superblock Stewardship Advisory Committee

**ADJOURNMENT**

The meeting adjourned at 2:00 PM.
REPORT ON AD HOC COMMITTEE
October 22, 2020

Sonia Das, Marilyn Nonken, Gay Abel-Bey, Andre Fenton, Maria Patterson, Lauren Davis

At the ad hoc committee’s meeting, the text for the Joint T-FSC and C-FSC Resolution on Anti-Racist Education was revised to address concerns expressed earlier in the process by members of the T-FSC and in response to the Executive Order on Combatting Race and Sex Stereotyping. The final draft is attached for review and discussion prior to Thursday’s vote.

The revised version has been reviewed NYU’s General Counsel Terrance Nolan, who maintains the following.

*The recent Executive Order, if it were to continue in effect, has no relevance here as it is directed at employee training by government contractors, not teaching and scholarship. The Counsel notes that statements such as this do have the potential to be raised in private litigation by those seeking, in civil discovery, from the authors, the underlying facts, documents or other information which formed the basis for its contents. The potential future suit(s) would not necessarily (or even likely) be based on the resolution. It could be a completely unrelated matter where alleged discrimination is an issue. Civil discovery, being as broad as it is, may involve the text and underlying rationale. This may not happen at all but civil litigation being what it is, I would be remiss if I did not point out the possibility - I am not suggesting that this possibility should be determinative.*
JOINT T-FSC and C-FSC RESOLUTION ON ANTI-RACIST EDUCATION

WHEREAS, the Tenured/Tenure Track Faculty Senators Council (T-FSC) and the Full-Time Continuing Contract Faculty Senators Council (C-FSC), representing the NYU tenured/tenure track and full-time continuing contract faculty (hereinafter, the “Faculty” and “NYU Faculty”) acknowledge that New York University has publicly condemned the racist attacks that have taken place in the United States over the past several months and applaud the educational initiatives, resources, and programming offered by NYU’s Office of Global Inclusion, Diversity, and Strategic Innovation (OGI) as well as the ongoing efforts of NYU’s Office of Equal Opportunity to address racism nationally and at NYU;

WHEREAS, racism and racial discrimination exist at NYU in teaching and scholarship and in the recruitment, retention, and accountability of Faculty;

WHEREAS, NYU Faculty desire to eradicate racism and racial discrimination in the recruitment, retention, and accountability of Faculty;

WHEREAS, NYU Faculty seek assistance in their efforts to identify and eliminate racism and racial injustice in their teaching and scholarship;

WHEREAS, NYU Faculty stand in solidarity with those who oppose hate, ignorance, and divisiveness, and are committed to taking action against race-based inequities that threaten excellence in teaching and scholarship; and

WHEREAS, a statement of commitment by NYU Faculty, both as a whole and individually, regarding their efforts to identify and eliminate racial injustice is a necessary first step to making lasting change;

NOW, THEREFORE BE IT RESOLVED THAT:

1) NYU adopt and customize anti-racism education and pedagogical materials (“Materials”) that Faculty throughout NYU-NYC and its portal campuses can use;

2) NYU facilitate and encourage use of the Materials by frequently and regularly disseminating them to all Faculty and discussing at all Faculty meetings, whether school-wide or departmental;

3) NYU avoid racism in Faculty recruitment and retention; adopt a comprehensive plan to attract, recruit, and retain a diverse Faculty; and hold the schools and academic programs accountable for implementing the plan by, among other things, requiring special effort in the selection and education of search committees and the use of policies and practices to address equity gaps and discrimination in recruitment and retention.
4) We propose that Faculty include the following pledge in their signature blocks and syllabi: “I will be brave enough to have uncomfortable conversations and take action against racism at NYU”; and

5) The T-FSC and the C-FSC are committed to these resolutions and to taking steps to transform NYU into an institution and community for all people.
TO: The T-FSC
FM: The Personnel Policies & Tenure Modification Committee
RE: Grossman School of Medicine’s Proposed New Policies for 1) Termination of Tenure for Cause, 2) Termination of Tenure-Track Appointments for Cause, and 3) Other Disciplinary Proceedings for Tenured and Tenure-Track Faculty.

About the Exceptional Genesis of these Policies—and Procedural Context

The Senior Vice President for Legal Affairs (and General Counsel of NYU)—expressly citing “in the spirit of shared governance”—has asked the T-FSC for comments on proposed policies from the Grossman School of Medicine, to institute a GSOM-specific framework for terminating Tenured or Tenure-track faculty for cause.

The PPTM Committee has undertaken a thorough examination of the documents shared with us. Our observations and questions about the proposed policies themselves are in the attached documents (consistent with past practice), for consideration by the T-FSC—in the expectation of receiving approval to forward (or forward as amended at our next meeting) to the Provost.

Issues of Jurisdiction. It should be kept in mind that it is not an anomaly that the General Counsel would forward the request for review. Unlike other deans who report to the Provost on academic matters, the Dean of the Medical School, under NYU by-laws, reports to the President. It is thus not irregular that the request to review has been transmitted by the General Counsel who is also both the official liaison with the Board of Trustees and serves as Secretary to the University Senate.

The most consequential of the three policies—for termination of tenure for cause has been proposed to supplant the existing university-wide policy framework—but only for the GSOM. In assuring the appropriate balance between policies governing university-wide practices and procedures and those that are appropriately school-specific policies, The Faculty Handbook clearly spells out that “colleges and schools have their own internal rules, procedures and policies...which may supplement—but do not supersede or replace—policies outlined in the Handbook unless an exception has been granted by the Board of Trustees or President and Chancellor.” (The Faculty Handbook, p. 31.) In other words, complementarity is expected. However, while deviation from standing policy and practice is not in the normal purview of the schools, for a policy to depart markedly from the guidelines spelled out in The Faculty Handbook, the same guidelines anticipate an exception, namely that it must be authorized by the highest level of University Leadership—the President and the Board of Trustees.¹

¹ This is the relevant passage from the UNIVERSITY BYLAWS: 92. Removal of Tenured Faculty and Tenured Librarians. Tenured Faculty and tenured librarians who have attained tenure will be removed only on the vote of a majority of the voting Trustees present at a regular or special meeting of the Board at which a quorum is present; provided that the Trustees and the person affected must be given at least two weeks’ notice that such action will be considered by the Board at that meeting. Procedure on removals will be in accordance with such rules of tenure as the Board may adopt.
Background Issues. Accordingly, the Grossman School of Medicine is seeking the approval of the President and the NYU Board of Trustees to institute a modification to one aspect of its policies governing tenured and tenure-track faculty, namely, the procedures for charging a faculty member for ‘adequate cause’ sufficient to lead to the loss of tenure and to subsequent dismissal.

The T-FSC has not been provided with any specific information from the Administration about the impetus for these new policies, nor have we been informed about previous consultation with the Provost or President (or the T-FSC) about where the established university methodology that has heretofore applied to all schools has failed the GSOM. What we have learned is that the medical school dealt with some exceptionally egregious cases of faculty misconduct last year. And though the outcomes may have led to satisfactory evidence-based conclusions, the bureaucratic complexity, duration of the process, and consumption of time and resources—not to mention the exacerbation of an element of risk to the School and the University because of the particular gravity of the violations of conduct that were documented—were deeply troublesome.

Thus arose the impulse to come up with a successor methodology, appropriate to the needs and culture of the GSOM, to replace the established, albeit rarely invoked practice of convening a university-wide Tenure Appeals Committee to evaluate and ultimately support (or reject) the bases for the termination--removal of tenure and dismissal--for “adequate cause.” The Handbook spells out procedures for establishing an ad hoc university-wide Tenure Appeals Committee, drawing its members from a pool of eligible candidates from all NYU Schools who have served as senior tenured Senators. No discipline-specific expectations are enumerated. It can thus happen that those chosen might include accomplished faculty who may, however, have no familiarity whatsoever with the conditions, responsibilities, and expectations of conduct that may be unique to the specific school bringing charges.

It is the PP&TM committee’s understanding that GSOM’s experience with exactly this type of circumstance was perceived to have been especially problematic. We are sensitive too that cause for a faculty member of the medical school—or arguably from any of the health science schools--might include misconduct with respect to real ‘life-and-death’ issues arising from the roles faculty assume as researchers whose work has direct implications for treatment of disease and also as practitioners themselves.

Thus the PP&TM Committee understands the argument for fair but expeditious and informed adjudication, and respects the right of the GSOM to ask for consideration of an alternative policy that could meet that objective. (We have not been informed whether such a process has been contemplated for individual cases--what has come before us is a policy proposed to apply in all cases.)

Our purpose here is to be constructive, to point out where areas of formulation in the procedures and the language of the proposed policy are seen that need attention, to help the school develop a unique policy that is workable, fair, clear, as narrowly focused
as the cornerstone issues require, and that aligns with the broader NYU-wide principles and practice of shared governance.

Whatever policy document is ultimately found acceptable to the Provost and the President will be presented to the Board of Trustees who will be expected to render or withhold their support to the 'final version' of the proposal that goes before them.

The sensitivity of the issue—loss of tenure and dismissal for cause—and the precedent it could represent are why the policy procedures and the language of the proposal warranted scrupulous attention by the PP&TM Committee on behalf of the T-FSC.

While this introduction has focused on the proposal for a policy that would substitute for the GSOM alone the existing university-wide policy on tenure removal, there are three interrelated policies being reviewed: 1) The procedures for dealing with cases about conduct that warrants the loss of tenure and dismissal for tenured faculty; 2) the procedures for dealing with cases for dismissal for cause of tenure-track faculty; 3) the procedures for dealing with other lesser disciplinary infractions, short of dismissal or loss of tenure, for all tenured and tenure-track faculty.

At the November 19th T-FSC meeting, we invite your feedback on our efforts to have evaluated these policies, and welcome all suggestions for improvements, and ultimately concurrence about what is to be submitted to the Provost and the President.
Termination of Tenure-Track Appointments for Cause, and 3) Other Disciplinary Proceedings for Tenured and Tenure-Track Faculty.

The observations and concerns shared below for consideration by the Provost’s Office, The President’s Office, and GSOM are primarily in the form of questions. Each arises out of preliminary observations that seek clarification about: the text/formulation of the policy including ambiguities that need resolution; how a section relates to (or departs from) The Faculty Handbook or best practices across the university; and in some cases, about the need for complementary information (by way of explanation or justification) that appears to have been overlooked.

All comments are intended to be constructive. It is our hope that any subsequent revisions to the GSOM policies ultimately submitted to the President and the Board of Trustees will benefit from this input, and achieve the policies’ reasonable objectives, with fewer risks, fuller deliberation, and greater procedural clarity.

**Development process concerns.** It is important, before sharing observations about the new policy frameworks themselves, to raise some questions about the process behind their development. This is particularly important with regard to the customary expectations of appropriate T-faculty involvement and representation in the drafting, consultation, and voting on any policy document concerning matters of tenure.

In the experience of the T-FSC over the past several years at least, the practice of all other NYU schools that have submitted new policies concerning appointment, advancement to tenure, promotion or separation of T-Faculty or of appointment, promotion, or separation of C-Faculty has been to provide confirmation of support by the majority of all eligible concerned faculty. This is usually done by citing the results of an official voting process conducted by secret ballot. (Indeed, over the last two years, the Provost has returned proposals to some schools, when it has been noted that that expectation was not met--or at least not reported. A majority vote of support from the pertinent faculty community has been expected, separate from the vote of the representative body of the Faculty Council, before the new policies would be eligible for consideration.)

This practice is consistent with the spirit of *The Faculty Handbook*, which is explicit about voting on matters of tenure and promotion: "Only tenured faculty may vote on the awarding of tenure; only full Professors with tenure may vote on promotion to full Professor within the Tenured/Tenure Track Faculty and on the awarding of tenure to a faculty member hired as a full Professor." Schools have applied this principle in assuring that the eligible faculty cohort is given voice before policies are approved within a school, prior to submissions to the Provost (or in this case, to the President).
The reason for the reminder here is that the GSOM transmittal document refers to the Faculty Council’s support for the policies. But it makes no reference to further consultation, such as a vote by protected secret ballot of all the eligible tenured and tenure-track faculty of the GSOM.

Why is securing the support of all eligible tenured and tenure-track faculty important? While it is clear that the new policies were supported by the GSOM Faculty Council by a large margin, the vast majority of the GSOM Faculty Council members are drawn from the clinical faculty, who constitute the vast majority of GSOM faculty as a whole. That means that however the T-faculty on the Council may have voted, their voice as T-faculty would have been in the minority.

Our T-FSC Senators from the GSOM have informed us that about two or so years ago the GSOM Faculty Council by-laws were revised—following the school’s guidelines. They now affirm that Clinical and T-Faculty can vote equally on all matters, including policies that govern Tenured and Tenure-Track faculty alone.

Given the natural majority of clinicians and their importance, it is of course entirely desirable that their views are considered in all shared issues that involve the faculty and their school as a whole. And it can certainly be argued that their opinions should always be solicited, and their experience valued.

But is there not a policy dilemma here?

Although the Provost on October 22 at the T-FSC meeting affirmed correctly that the vote was conducted in accordance with the school’s by-laws, might there be an unintended, but potentially highly problematic precedent for the university as a whole—in authorizing C-Faculty to vote on matters governing the tenure rights of T-Faculty, let alone the process for removing tenure? That authority seems to be in clear opposition to the language (and the spirit) of the Handbook, cited above.

In this instance, do the School’s Faculty Council by-laws supersede the kind of comity of principles that animate the Handbook—and if so, can they be maintained? (A question of constitutionality, of sorts.) Would such a change in itself require a policy review—and vote of approval—by the President and the University Board of Trustees, for superseding university-wide principles?

The preoccupation with precedent here is also a matter of prudence for GSOM with respect to the application of its proposed new policies. If the rights of the T-Faculty to have a protected voice on matters that affect them exclusively were not respected, does that not make GSOM vulnerable in a potential grievance/lawsuit emanating from a “guilty” party—who might credibly raise a procedural challenge whether the policy that led to his/her dismissal was legitimately implemented, and if not, whether it has standing?
The aforementioned concern is thus far hypothetical. It could be easily attenuated if we were informed that separately the proposal was also submitted to all GSOM T-Faculty for a vote by secret ballot (the practice at other schools), and received the support of a majority of those eligible.

While these questions and references to best practice comparisons are not about the **substance** of the particular tenure policy modifications under consideration, the absence of clarity about this sensitive matter of apparent inconsistency with University policy and practice impacts our reading of the policy document, making us more attentive to ambiguities in its language that appear concerning.

What follows are a series of numbered (1-16) “**PPTM comments**” about substantive issues, presented as interlinear notes in the body of the submitted documents themselves.

Concerns about errors in presentation, textual cross-references, gnarled passages, etc. are identified as “**PPTM technical comments**”--and to differentiate them for the more substantive issues addressed by the ”PPTM comments,” are in a distinctive font and color and are marked alphabetically (A-F).

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**Sequential Commentary on GSOM’s Proposed Policies**
PPTM #1 comments re: The Resolution (below). Question about process. The Medical School has its own Advisory Board, made up of select members of the NYU Board of Trustees. The President and the NYU Board of Trustees must vote on any policy that will supersede the guidelines spelled out in The Faculty Handbook.

This resolution comes from the Advisory Board of the GSOM to the NYU Trustees as a whole.

Is this the normal route for approval? Would it not be established academic protocol for the President (in consultation with the Provost) to weigh in first—as the ultimate academic authorities of the University—before involving members of the Board of Trustees? Is there not a risk of politicizing what should be a carefully wrought academic recommendation?

RESOLUTION OF THE BOARD OF TRUSTEES OF NYU GROSSMAN SCHOOL OF MEDICINE ADVISORY BOARD

Recommend Amendment to NYU Faculty Handbook September 22 2020

WHEREAS, faculty members of NYU Grossman School of Medicine ("GSOM") are governed by policies set forth in the New York University Faculty Handbook; and

WHEREAS, in recognition of the types and import of misconduct issues specific to the GSOM, GSOM leadership recommends that provisions of the Faculty Handbook with respect to disciplinary and termination procedures for tenured and tenure-track faculty be amended as applicable to faculty of GSOM, as set forth in the proposed amendment attached hereto, and

WHEREAS, the GSOM Faculty Council has approved the proposed amendment.

NOW, THEREFORE, be it hereby:

RESOLVED, that the Advisory Board hereby recommends that the Board of Trustees of New York University approve the proposed amendment to the NYU Faculty Handbook, solely applicable to the NYU Grossman School of Medicine.
PPTM #2. Comment regarding the bracketed introductory paragraph: We note the expressed intention to have these policies replace the procedures laid out in the Faculty Handbook.

[The procedures outlined below are intended to supersede the procedures set forth in Titles I (VI), III and IV of the New York University Faculty Handbook establishing the disciplinary rules and proceedings applicable to tenured and tenure-track faculty members at the Grossman School of Medicine]

A. Tenured Faculty

I. Termination of a Tenured Appointment

A tenured faculty member's employment and faculty appointment in the Grossman School of Medicine may be terminated for "Adequate Cause" as defined in Title I.VI.2 of the New York University Faculty Handbook.

II. Proceedings for Termination of a Tenured Appointment

I. General Provisions

a) [Rules; notice; record] Proceedings for termination of service for cause shall be conducted in accordance with the rules herein as may from time to time be amended by the Board of Trustees, and shall be initiated by service upon the person involved of a written notice setting forth clearly and directly all charges preferred against him or her and informing him or her of his or her rights under this section. The person charged shall be entitled to a hearing before a hearing panel of the Grossman School of Medicine Tenure and Tenure-Track Faculty Disciplinary Committee. A full stenographic record of the hearing shall be given to the parties concerned.
**PPTM #3 (comment & question).** This language (in 1b) is consistent with the Handbook as it applies to all schools—it is the President (and not the Provost) who is the ultimate decider. Would there be merit in suggesting (not just for GSOM) that as termination for cause is the most sensitive personnel action within the academic culture, that there be some expectation that the Provost review the dossier before passing it (expeditiously) to the President for the final determination?

b) [Appeal to the University President] Upon the request of either the faculty member charged or the charging party, the record, findings, conclusions, and proposed sanctions of the hearing panel of the Tenure and Tenure-Track Faculty Disciplinary Committee shall be forwarded to the University President for review and final determination. In the absence of such request, the findings, conclusions, and proposed sanctions of the hearing panel shall be final.

c) [Rules bind all parties] The rules regulating proceedings to terminate service for cause shall be binding upon all parties.

Several concerns about section A. II. 1. d:

**PPTM #4.**

- The authorization to give the dean authority “*whenever in his or her judgment*” sees a threat to the well-being of the individual or to the school could be interpreted as giving license to arbitrary dissatisfaction with the faculty member. To avoid an open-ended use of authority, we recommend an affirmation/expectation about the availability of substantial preliminary evidence that has informed the dean’s judgment: For ex: “...*whenever upon an examination of a substantial body of compelling evidence, in his or her judgment, continuance....*”

**PPTM #5**

- The word “reputation” is an addition to the language of the *Handbook*. Worries about damage to institutional reputation might be a valid consideration in some cases, especially if the egregious misconduct that has triggered the process of seeking to withhold tenure and dismiss, has become public knowledge or, for example, it risks compromising relations with a major funding agency supporting other GSOM researchers. On the other hand, is there a risk that citing potential damage to reputation as a substantive cause for dismissal in itself might also be highly subjective—and thus potentially arbitrary? Again, perhaps language that is more explicit about what is intended by way of “damage to reputation” could be strengthened with a hypothetical example of what “damage to reputation” might entail.
PPTM #6.
The discussion of the bases of salary reduction is a substantial addition to the current policy. The language of the Handbook: "Unless legal considerations forbid, any such suspension shall be with full base pay. At any time during the pendency of termination proceedings, the President and Chancellor may lift or modify any suspension in the interest of substantial justice.” This GSOM alternative may be a reaction to frustrating previous experiences with salary costs during prolonged deliberative processes, but the details herein are notably far more specific about the bases for withholding compensation than the existing policy—and yet might also be too limited.

In this case, would it be advisable to have a more general statement, which puts the respect for “substantial justice” in play both for lifting or modifying a sanction—as well as increasing a sanction by imposing allowable reductions of compensation consistent with the law? Something like “At any time during the pendency of termination proceedings, the President and Chancellor of the University may lift or modify any suspension in the interest of substantial justice, or conversely when sanctioned by law impose some element of reduction in compensation beyond base salary.”

Moreover, does not the punitive focus on reducing compensation in the policy (notwithstanding how much the circumstances might justify reducing compensation until the process is completed) need also to be balanced against some anticipation that the accusations against the faculty member might not be conclusive? On the supposition that the accused will be considered innocent until the charges of adequate cause are evaluated and upheld, it might be prudent to consider putting whatever part of compensation is being withheld into a kind of escrow account during the duration of the deliberative process. Should the accusations be corroborated and loss of tenure and subsequent dismissal are supported, those funds then return to the School. Should the charges not be sustained, the withheld compensation would be paid to the faculty member.

Of course the proceedings for disciplinary action would not be undertaken without compelling evidence at the outset. But some more consideration for the due process “rights” of the accused throughout the proceedings would strengthen the University’s ability to sustain a decision to dismiss.

[Summary suspension] Summary suspension pending termination proceedings is an extraordinary remedy, but nothing in this statement shall be interpreted as precluding such action by the Dean of the School, with the assent of the President whenever, in his or her
judgment, continuance of the person in service threatens substantial harm to himself or herself, to others, or to the welfare or reputation of the University or the Grossman School of Medicine. During the period of such suspension, the faculty member's pay shall be adjusted to, and the faculty member shall be paid, the base salary commensurate with the faculty member's position, except in a case where the faculty member is incarcerated or under prosecution for a criminal act or is employed by another employer with equivalent compensation during the period of any such suspension, in which case the suspension shall be without salary or compensation. At any time during the pendency of termination proceedings, the President may lift or modify any suspension in the interest of substantial justice.

**PPTM #7:** Language. In a civil or criminal trial, the outcome of conviction or acquittal is not pre-determined—but the process is initiated because of reasonable supposition of the likelihood of guilt. A trial is about an alleged crime, not the punishment that would follow conviction.

If the analogy holds, shouldn’t the proceedings begin with the effort to establish adequate cause for dismissal, not with a statement of a predicted outcome? “Dismissal Proceedings” implies that the conclusion has been pre-determined. Punishment comes after the allegations have been corroborated and no other course of remediation is available---and the loss of tenure and of employment are justified. At the least, the conclusion might seem less foregone if the policy retained language of the *Faculty Handbook*: “Initiation of Disciplinary Proceedings.”

**PPTM technical comment #A.** Numeration. The numbering of sections in the documents is irregular, not following the usual order of I.A.1.a.i, etc., but A.II.a. As for the section below, the last number in the sequence being used heretofore was an un-italicized Roman Numeral “I.” As there is no preceding Arabic “1” previous to this, should what follows then be Roman numeral “II.”? (Whatever revisions may occur in the policies, the sequence numbering should be normalized and internally consistent throughout.)
2. **Initiation of Dismissal Proceedings**

**PPTM #8.** Same concern as #4 above about the language—“Whenever the Dean or the Vice Dean...” being too open-ended.

- a) Whenever the Dean or the Vice Dean for Education, Faculty, and Academic Affairs of the Grossman School of Medicine (the "charging party"), with the assent of the President, deems that such action is warranted, the charging party shall initiate proceedings to terminate for cause the service of a tenured faculty member. The charging party shall formulate, or cause to be formulated, the charges in writing. A copy of such charges, together with notice of proceedings for termination of his or her service for cause, shall be e-mailed or mailed by registered mail to the faculty member involved (the "respondent").

**PPTM technical comment #B.** Re § 2.b. Given that turnaround time for various steps of the process must be respected by different parties, here and elsewhere when a certain number of days are specified, it might be prudent to affirm whether calendar days or working days are intended. Imagine that charges are served on Friday, December 21, 2020: Would the respondent be in compliance only if answers are forwarded by January 10, 2021—or would weekends and the December 25 and January 1 holidays not be counted, allowing the respondent to be in compliance by submitting answers by January 20? Not a trivial ambiguity. Recommend clarification of intent at some point in the document.

- b) The respondent shall serve a written answer upon the charging party within twenty (20) days after service of the charges and notice upon him or her admitting or denying each of the allegations contained in the charges and setting forth any defenses to the charges. The time for service of the answer may be extended by the charging party in the interests of substantial justice.

**PPTM #9:** The proposed policies in § c) below seek to replace the Faculty Handbook's guidance about the Tenure Appeals Committee that would normally be charged to evaluate and make recommendations about the determination that separation for cause is justified.

So particular attention here is essential.

- **Representation.** It is common practice to assure that committees constituted to deliberate on matters of promotion (for Clinical and T-faculty) or consideration for tenure (for T-faculty), the relevant faculty body would be expected to select/vote for one or more representatives, who are NOT appointed by the Dean. In the event of likely contestation by an ‘accused’ faculty member—whatever rights to appeal or
grieve are guaranteed—constituting membership from GSOM to include ONLY faculty members who hold administrative positions under the Dean is problematic. Could this oversight be remedied to suggest that at least two more T-faculty members on the Disciplinary Committee should be elected by their peers and be independent of holding academic administrative responsibilities? That would be consistent with principles of shared governance and mitigate the appearance of bias, in balancing representation of faculty members with administrative titles appointed by the dean with those chosen by their peers.

- Inclusion of participation of faculty from other Schools. It is salutary that GSOM seeks input from other schools—in partial emulation of the university-wide net cast by the selection of the Tenure Appeals Committee. But, while there’s a transparent logic in including representation from the other Health Science schools where faculty are involved in research and clinical practice, and balancing an aspiration for greater efficiency (because fewer schools would be involved), is there a middle-ground?

T-research faculty in the sciences in FAS, Tandon, or select departments from other schools who are heavily dependent on grant funding from government agencies and major foundations, might also be well-positioned to understand the gravity of evidence that concern data manipulation, fraudulent reporting, disregard for human subject research protocols, etc. Possible Hearing Panel representation from the School of Law might be particularly helpful as well.

Although there may be compelling arguments to simplify the process used in constituting the Tenure Appeals Committee by avoiding the requirement to call upon ALL schools, it remains self-evident that welcoming a somewhat larger but qualified pool to draw upon could make it easier to constitute a viable committee—and help guard against perceived or actual bias.

- Lastly: Obviously dealing with such cases involves a prudent impulse for damage control, and assuring an equitable process—one that is as confidential as is humanly possible. This said, are there practices at other universities known to GSOM that in dealing with such matters, include an “external” faculty member from another institution in the disciplinary/hearing panel?

c) Upon receipt of the answer of the respondent, unless the respondent resigns their tenured faculty appointment, the charging party shall convene the Tenured and Tenure-Track Faculty Disciplinary Committee. The Committee shall be composed of five members, each a tenured faculty member, consisting of President of the Faculty Council, the Chair of the Grossman School of Medicine Appointments, Promotion and Tenure Committee, the Chair of the Professional Conduct Committee of NYU Langone Hospitals, the
School of Nursing's longest-serving Senator on the Tenured/Tenure Track Faculty Senators Council, and the School of Dentistry's longest-serving Senator on the Tenured/Tenure Track Faculty Senators Council. In the event any of the faculty members holding these designated positions are non-tenured, the Executive Committee of the Faculty Council shall select a tenured member of the body represented by such non-tenured faculty member (except that, in the case of the Faculty Council, it shall be the most recent past President of the Faculty Council who was tenured).

**PPTM technical comment #C.** Our committee is unable to comprehend the procedure being stipulated in the highlighted passage above. Recommend a rewrite.

After appointment, in the event of a Committee member’s conflict of interest or inability to serve, the other Committee members will designate a tenured senior faculty member of the body represented by such Committee member to serve on the Committee in such member's place. No member of the Tenured and Tenure-Track Faculty Disciplinary Committee from the same department as the respondent may serve as a member of the Committee during tenure revocation proceedings.

d) The charging party shall forward to the Tenured and Tenure-Track Faculty Disciplinary Committee copies of the written charges and of the answer to such charges. If the respondent fails to serve a written answer within twenty (20) days, or any extension of such time, the charging party shall nevertheless forward the charges to the Tenured and Tenure-Track Faculty Disciplinary Committee with a statement showing that no answer has been served by the respondent.

e) Within twenty (20) days after submission of the charges and answer, or of the charges alone, as the case may be, to the Tenured and Tenure-Track Faculty Disciplinary Committee, the committee shall set a time for the commencement of a hearing, which shall not be more than thirty (30) days thereafter unless further time is granted by the Committee upon request of either party. The Tenured and Tenure-Track Faculty Disciplinary
3. Conduct of Hearings before the Hearing Panel

a) A hearing officer who is an attorney shall preside over the hearing on the charges. The charging party and the respondent shall select a hearing officer from a list of 10 qualified attorneys compiled by the American Arbitration Association to conduct the proceedings. The charging party and respondent may each strike up to five names from the list and each shall rank, in order of preference, the names of those whom they have not stricken. The Association shall then designate as the hearing officer the available person with the highest degree of joint preference of the parties. Should more than one available person have an equally high joint preference, the Association shall select the hearing officer by lot from those with the highest joint preference.

b) A calendar of hearing dates in a proceeding for dismissal shall be fixed by the hearing panel after consultation with the parties to the proceeding and the hearing officer; the calendar shall be read into the record on the opening day of the hearing; it shall be adhered to unless the hearing panel orders exceptions for due cause. Whenever the interests of substantial justice appear to so require, the hearing panel may direct either or both parties to submit a summary of the evidence, a first list of witnesses to be called, or both. If the statement of the charges, or the answer thereto, appears to the hearing panel to be indefinite or obscure, the hearing panel may require a more definite statement. Where the respondent has failed to serve an answer to the charges and where it further appears that the respondent is unable to understand the charges and to participate meaningfully in the proceeding, the panel shall obtain the services of a qualified person to represent the respondent, at the respondent's expense. In the absence of such circumstances or other good cause, upon the failure of the respondent
to serve an answer prior to the commencement of a hearing or to appear at the hearing, the panel may, in its discretion, preclude the subsequent assertion of any defense or the introduction of evidence on behalf of the respondent.

c) The hearing officer shall preside over the hearing and rule on all procedural matters, including the admissibility of evidence, subject to the right of each party to appeal to the hearing panel. Upon such appeal, the decision of a majority of the panel members shall control. The panel shall have the power to enlarge the time appointed in these procedures for doing any act or taking any proceedings, where the interests of substantial justice appear to so require.

d) The hearings shall not be restricted by the rules of procedure or of the admissibility of evidence which prevail in the courts of law. Subject to the provisions of section (c) above, each member of the hearing panel may inquire into whatever is believed relevant to the inquiry. Whenever the proceedings originate from a finding of scientific or research misconduct in accordance with the separate rules governing such proceedings, the hearing panel shall deem the report of the earlier committee to constitute the facts as to the existence of such misconduct.

e) The respondent and the charging party may be assisted by counsel of his or her choice throughout the proceedings. Counsel for both sides shall cooperate at all times with the panel and the hearing officer.

f) A request by either party to present witnesses shall be made to the hearing panel, which may limit the hearing of witnesses at its discretion. If witnesses are called, each party shall have the right of cross-examination. Each party may introduce exhibits, which shall constitute part of the record of the case.

g) A stenographic record shall be made of all proceedings at the
hearing. On order of the hearing officer, procedural matters may be discussed in executive session, the minutes of which need not be included in the transcript of the record of the hearing. The transcript shall be available to all parties to the hearing.

h) Each party shall have equal opportunity at the final session of the hearing for the summation of the case, either in person or by counsel, but no new evidence or testimony may be introduced during such summation.

**PPTM #10.** Re § 3.i (below): Clarification needed regarding the size of the committee. Is this an oversight or is something else intended? There are five (5) members of the proposed hearing panel, not three (3) as the opening sentence states. On the other hand, there are three members from GSOM. (Not taking into account the question raised in PPTM #9 above about the benefits of enlarging the panel.) Therefore, is the “three” below just a typo, when “five” was intended? Or does the proposed rule here intend that the *three GSOM reps* must be present?

And there’s a related concern about the nature of the vote. If the hearing panel is limited to five members, three of whom are from GSOM, that would assure the medical school of the possibility of achieving a majority in every vote. This mathematical certainty is thus an additional argument for enlarging the panel further so that a majority vote could only be achieved with support from representatives from other schools—or for requiring *a unanimous vote* from a smaller number of members.

i) All three members of the hearing panel shall be present at the hearing. If, after the commencement of the hearing, a member of the panel becomes unable to continue to serve, he or she shall be excused from further service, and the member's designee (a tenured senior faculty member of the body they represent) shall serve in his or her place. Prior to serving on the panel, the member's designee must have read the hearing transcript and all charges and other pleadings filed in connection with the hearing and certify to having done so. Should a member of the panel repeatedly fail to carry out his or her obligations as a member of the panel, upon a unanimous vote of the remaining members of the panel, he or she may be discharged from further service and replaced by a tenured senior faculty member of the body represented by the replaced member, such replacement member to be elected by the remaining panel members.

j) Upon completion of the hearing, the panel shall deliberate and
issue its decision in a written report. The deliberations shall be conducted in executive session and shall be attended only by the members of the hearing panel. The decision of the panel must be based upon the evidence presented, and no recommendation of dismissal shall be made based solely upon the failure of the person involved to answer the charges or appear at the hearing. The decision of the panel must be supported by a majority of its members.

**PPTM #11.** Re §3. k.(below): Clarity. To a non-lawyer, the language of this section is not clear. It is likely that a substantial body of information against the accused faculty member will be provided in confidence. However, what is being protected? Confidentiality—or its breach? Does this paragraph intend to protect participants who “leak” information about the hearings that gets published? Or about their ability to access confidential information? Moreover, does the ‘charged’ faculty member have immunity as well—since he or she is a member of the faculty and a witness in his/her self-defense? Respectfully suggest that section 3.k, should be re-written to avoid ambiguity of intent and vulnerability of application.

k) [Hearing Immunity]. The members of the Board of Trustees, the President and Provost of the University and other officers of administration, the members of the Tenured and Tenure-Track Faculty Disciplinary Committee, the Vice Dean, the Dean and members of the faculty, and all witnesses and other participants in any hearing shall be absolutely privileged as to statements or publications made in connection with the hearings, and shall have complete immunity for any decision, statement of fact, or comment relating thereto.

4. Decision and Report of the Hearing Panel

a) The hearing panel's decision shall resolve the matter, unless the matter is appealed, as set forth in section (d) below. The report containing the hearing panel's decision shall be in writing and shall consist of: (1) a transcript of the record of the hearing and the exhibits offered or introduced into evidence by the parties; (2) such findings, conclusions and any proposed sanctions as the panel shall make, including a statement of the facts deemed essential to the findings; (3) a memorandum setting forth the reasons for any recommendations; and (4) any memorandum submitted by any dissenting member of the panel, at his or her own discretion, with reference to his or her opinion as to the matters in controversy.
b) Each finding, conclusion, and recommendation shall be reported with the numerical vote of the members of the panel, but not with the names of the members who voted for or against the same.

c) Complete copies of items (2), (3), and (4) in section (a) above shall be transmitted to the parties to the hearing and to the University President.

5. Appeal to the President

a) Either party may appeal the hearing panel's decision in writing to the University President, who may seek consultation at his or her own discretion. The bases for appeal are limited to the following: (1) findings in support of one or more of the charges are not supported by substantial evidence in the record as a whole, or (2) hearing was not conducted fairly or was not conducted in substantial compliance with the governing rules, or (3) the sanction is disproportionate to the infraction. The appeal request should set forth the basis for the party's appeal, and any arguments in support of a reversal of the hearing panel's decision.

b) Upon appeal, after reviewing the report and decision of the hearing panel, and any documentation submitted in support of the appeal, the President shall issue a written decision, which shall be considered final.

c) [Appeal of Decision to Dismiss for Cause]. On appeal of the hearing panel's decision to dismiss the faculty member for cause, the President shall uphold the hearing panel's decision unless the President determines either: (i) that the findings against the faculty member on one or more of the charges are not supported by substantial evidence in the record as a whole; (ii) that the hearing was not conducted fairly and in substantial compliance with the rules set forth above for the conduct of such hearings; or (iii) that the sanction of dismissal is not appropriate. If the President determines either (i), (ii), or (iii), the President shall have the option to either: a) dismiss the charges; b) remand the case for a new hearing before the same or a new hearing panel; or c) reduce the sanction.
PPTM #11. Re § 5.c.iii.b above and 5.d (below). **Problematic ambiguity in the language.** Given that two of three of the hypothetical reasons for the President to empanel a new hearing panel are related to perceived irregularities in the process, in the event the President agrees that the hearing may not have been conducted fairly or was not in compliance with the governing rules, would it not appear irresponsible to call for a new hearing before the *same* panel?

d) [Appeal of Decision Not to Dismiss for Cause]. On appeal of the hearing panel's decision not to dismiss the faculty member for cause, the President shall make the final determination with respect to the appropriate sanction to be imposed, including any decision to dismiss the faculty member or increase any sanction recommended by the hearing panel. If the President determines either that the hearing panel's findings are not supported by substantial evidence in the record as a whole, that the hearing was not conducted fairly, or was not conducted in substantial compliance with the governing rules to the detriment of the charging party, the President shall have the option, but shall not be required, to remand the case for a new hearing before the same or a new hearing panel.

e) If the President's decision is to terminate the service of the tenured faculty member, it shall be subject to approval by the Board of Trustees. The final disposition of the case shall be made public only after the faculty member has been officially informed of the decision of the President. Until that time no information concerning the hearings shall be disclosed to the public.

B. Tenure-Track Faculty

Notwithstanding provisions set forth in Title II, Section XI of the Faculty Handbook by which a non-tenured tenure track faculty member may be removed upon sufficient notice where it is unlikely that tenure will be achieved, a tenure-track faculty member may be removed for "Adequate Cause" (as defined in Title I.VI.2 of the University Handbook), in which case the proceedings set forth below shall apply.
I  Proceedings to Terminate for Cause a Non-Tenured Tenure-Track Appointment

PPTM #12. Re § B.I.a. (below). [Recalls PPTM #4 (above)]. As written, the highlighted language is too open-ended and could be an invitation to arbitrary action. Some reference to due-diligence and finding compelling grounds should precede "whenever".

a. Whenever the faculty member's Department Chair (the "charging party") deems that such action is warranted, the charging party shall initiate proceedings to terminate for cause the service of a non-tenured tenure track faculty member.

b. The charging party shall draft a memorandum setting forth the basis for removing the faculty member and forwards to the Vice Dean for Education, Faculty, and Academic Affairs of the Grossman School of Medicine (the "responsible administrator"). Upon authorization by the responsible administrator, a copy of such memorandum, together with notice of proceedings for termination of his or her service for cause, shall be e-mailed or mailed by registered mail to the faculty member involved (the "respondent").

c. The respondent shall serve a written response to the charging party and to the responsible administrator within twenty (20) days after receipt of the charging party's memorandum. The time for service of the answer may be extended by the responsible administrator in the interests of substantial justice.

PPTM technical comment #D. re § B.I.d below. We cannot find the referenced section in this document. Need to remedy.

d. The responsible administrator shall forward to the Tenured and Tenure-Track Faculty Disciplinary Committee (as described in Section III.2(d) above) a copy of the memoranda from each party. If the respondent fails to serve a written response within twenty (20) days, or any extension of such time, the responsible administrator shall nevertheless forward the charging party's memorandum to the Committee with a statement showing that no response has been served by the respondent.

e. Both the charging party and the respondent will have the opportunity to appear before the Committee to present an oral
summary of the arguments in support of their position. The respondent and the charging party may be assisted by counsel of his or her choice. Counsel for each party shall cooperate at all times with the panel.

f. A request by either party to present witnesses shall be made to the hearing panel, which may limit the hearing of witnesses at its discretion. If witnesses are called, each party shall have the right of cross-examination. Each party may introduce exhibits, which shall constitute part of the record of the case.

g. Each member of the Committee may inquire into whatever is believed relevant to the inquiry. Following the oral summaries, the Committee shall deliberate and deliver its decision, in writing, to both parties and to the responsible administrator. The Committee's decision shall consist of: (1) such findings, conclusions and any proposed sanctions as the panel shall make, including a statement of the facts deemed essential to the findings; (2) a memorandum submitted by any dissenting member of the panel, at his or her own discretion, with reference to his or her opinion as to the findings, conclusions, and any proposed sanctions.

h. Either party can appeal the Committee's decision to the Dean. The bases for appeal are limited to the following: (1) findings are not supported by substantial evidence in the record as a whole, or (2) the sanction is disproportionate to the infraction.

PPTM #14. Re § B. II. i. (below). Concerns about due process. Seems that the accused faculty member has no basis of defending him/herself except through counsel, has no means of appeal, or access to a grievance process, and that there is no “hearing panel” as such. Is this a misreading? A vulnerability?

Since the Faculty Handbook is silent on dismissal for cause for a tenure-track faculty member, it offers no guidance as such.

i. After reviewing the report of the Committee, the Dean shall issue a written decision to the parties, which shall be considered final. If "cause" is found, the faculty member shall no longer be eligible for tenure at the School and may be terminated without further notice.
**PPTM #15.** Re: §C (below). The opening statement to section C may be the most worrisome language in the policy document as written. Its formulation could be construed as an invitation for peremptory dismissal for minor missteps that might be easily remediable.

Of course, disciplinary action is warranted in light of truly egregious misconduct or recurrent patterns of problematic behavior/performance.

But is it not dangerous or even potentially abusive to be able to invoke failure to “abide by any rule or regulation” of the GSOM as the basis for initiating disciplinary action?

Consider these conjectural concerns: Couldn’t such a broad authorization be used to seek to sanction a faculty member for the exercise of academic freedom and/or of sound professional judgment, in the event she or he might challenge a policy, a practice, or an internal regulation on entirely professional and reasonable grounds? Or if she or he were unable to comply with—for example, the expectation of attending a certain number of meetings--because of documented health or family circumstances?

Similarly, it is easy to imagine how perceived non-compliance with “professional standards” could be subject to ambiguity of interpretation—and arbitrary charges. Is there an existing policy document known to all faculty where these GSOM-specific standards are spelled out in an institutional code of conduct, for example? (If so, this particular concern would be unwarranted—and the lack of specificity in the document here could be resolved simply by referencing where the statement of those standards can be accessed.)

It is expected of course that any proposed disciplinary policy would be applied judiciously--and in the expectation that the need for deploying it would be rare.

That’s why it is especially important that the first part of the framework paragraph below--which establishes the justification for a broad range of disciplinary sanctions--be re-written. The last lines of the paragraph (from “engaged in an activity...”) are straightforward and unexceptionable. But we respectfully submit that what precedes them needs to be re-worked to avoid being so open-ended as to seem to give license for abuse and inadvertently seed a climate of mistrust.

**C. Other Disciplinary Proceedings for Tenured or Tenure-Track Faculty**

The following procedure applies when a tenured or tenure track faculty is alleged to have violated or failed to abide by any rule or regulation of the Grossman School of Medicine, engaged in behavior or conduct that does not meet the professional standards of the School, engaged in an activity that is a threat to the welfare or safety of anyone in the medical center community, or violated any local,
state, or federal law, for which the discipline sought is not termination.

a. After an internal investigation confirms evidence of a basis for such action, the Chair of the faculty member's department shall make a recommendation to the Vice Dean for Education, Faculty, and Academic Affairs of the Grossman School of Medicine for disciplinary action. Disciplinary action under this section shall include, but is not limited to, the following:

1) Reprimand
2) Censure
3) Removal of Privileges
4) Suspension
5) Monetary fine

b. If the Vice Dean approves disciplinary action, the Vice Dean will notify the Chair, who will notify the faculty member in writing.

PPTM technical comment #E re § C.c. below. Unclear reference. Since the Vice Dean is also a dean, on the assumption that the faculty member’s right to appeal cannot be to the person who approved the disciplinary action, the text should be explicit that the “Dean of the School” is intended.

PPTM technical comment #F refers to the highlighted clause below. Where can these policies or procedures be found? It is customary to refer to specific school by-laws, grievance policies, etc., so that the expectations are transparent and the governing frameworks are identified. (And usually included or cited via an accessible hyperlink when a new proposal is being advanced for consideration.)

c. The faculty member has the right to appeal the decision in writing to the Dean on the following grounds: (I) the decision was not supported by substantial evidence on the record, or (2) the investigation was not conducted fairly or in accordance with the applicable policy and/or procedures; or (3) the sanction is disproportionate to the infraction.

PPTM #16. Re § C.d. (below). A question not about what is written, but an anticipation for the need for something not apparently considered. What if it's the Dean him/herself who initiates the charges? The policy must therefore also anticipate who adjudicates in such cases, because the same individual cannot be the accuser/prosecutor and the judge. (Other schools have named the Provost as the arbiter in anticipating this eventuality.)

d. Upon review of the record and the appeal request, the Dean shall issue a decision, which shall be considered final.
Resolution to Adopt a Green Open Access Policy

WHEREAS the Faculty of New York University is committed to disseminating the fruits of its research and scholarship as widely as possible, and

WHEREAS, in addition to the public benefit of such dissemination, this commitment is intended to serve faculty interests by promoting greater reach and impact for articles, simplifying authors' retention of distribution rights, and aiding preservation, and

WHEREAS NYU lags significantly in terms of its peer institutions, whose faculties have adopted such policies as early as 2005,

THEREFORE, BE IT RESOLVED that, in keeping with these commitments, the Faculty adopt the proposed policy on Open Access for Research.
NYU Policy on Open Access for Research (Draft)\textsuperscript{1}

The Faculty of New York University is committed to disseminating the fruits of its research and scholarship as widely as possible. In addition to the public benefit of such dissemination, this commitment is intended to serve faculty interests by promoting greater reach and impact for articles, simplifying authors’ retention of distribution rights, and aiding preservation. In keeping with these commitments, the Faculty adopt the following policy on Open Access for Research.

Under this policy, each Faculty member will grant to New York University permission to make available their scholarly articles and to reproduce and distribute those articles for the purpose of open dissemination. In legal terms, each Faculty member will grant to New York University a non-exclusive, irrevocable, royalty-free, worldwide license to exercise any and all rights under copyright relating to each of their scholarly articles, in any medium, and to authorize others to do so, provided that the articles are not sold. The NYU faculty author will remain the copyright owner unless that author chooses to transfer the copyright to a publisher.

The policy will apply to all scholarly articles authored or co-authored while the person is a member of the Faculty, except for any articles completed before the adoption of this policy and any articles for which the Faculty member entered into an incompatible licensing or assignment agreement before the adoption of this policy.

A policy designate may waive application of the license for a particular article or delay access for a specified period of time upon written request by a Faculty member. To assist the University in

\textsuperscript{1} This draft policy draws heavily on the recommendations of the Berkman Klein Center for Internet & Society at Harvard University’s Good practices for university open-access policies which has been endorsed by numerous projects and organizations, including:

- Association of Research Libraries (ARL)
- Australasian Open Access Support Group (AOASG)
- Coalition of Open Access Policy Institutions (COAPI)
- Confederation of Open Access Repositories (COAR)
- Electronic Information for Libraries (EIFL)
- Enabling Open Scholarship (EOS)
- Harvard Open Access Project (HOAP)
- Library and Information Association of South Africa (LIASA)
- Mediterranean Open Access Network (MedOANet)
- Oberlin Group
- Open Access Directory (OAD)
- Open Access Policy Alignment Strategies for European Union Research (PASTEUR4OA)
- Open Access Scholarly Information Sourcebook (OASIS)
- Right to Research Coalition (R2RC)
- Scholarly Publishing and Academic Resources Coalition (SPARC)
- SPARC Europe
- UK Open Access Implementation Group (OAIG).
distributing the scholarly articles, each faculty member will make available, as of the date of publication or upon request, an electronic copy of the final author's version of the article at no charge to a designated representative of the Libraries in an appropriate format (such as PDF) specified by the University Libraries. The University Libraries will make the article available to the public in NYU's open-access repository. In cases where the NYU license has been waived or an embargo period has been mutually agreed, the article may be archived in a NYU repository without open access, either limited to NYU-only access or no access at all, for the period of the embargo or permanently, depending on the waiver.

The Office of the Provost, in consultation with the Executive Committee of the Faculty Senate, will be responsible for interpreting this policy, resolving disputes concerning its interpretation and application, and recommending changes to the Faculty from time to time.

The policy and service model will be reviewed on a regular, periodic basis and a report presented to the Faculty via the Senate.

For more information on the implementation of this policy, contact the Director of Scholarly Communications and Information Policy at NYU Libraries.
Report from the T-FSC Educational Policy and Faculty Student Relations Committee: Shady Amin, David K Irving, Anja Jauernig, Alex Jassen, Robert Lapiner, Allen Mincer, and Robert JC Young

The Committee met with five student officers from the Student Governance Committee on November 10, 2020. There was no set agenda. The topics that rose to the surface were:

a. Issues related to Zoom such as affordability of equipment, stability of internet connection, and time zones.

b. Accommodation letters and directives from the Moses Center seem to be up for interpretation. The consensus of the committee is that an inquiry should be made as to the degree of compliance implicit in a Moses letter to a faculty member.

c. Recording of classes. Faculty response to recording of classes varies with extremes from those who record all classes and make them freely available to those who refuse recording even for accommodation purposes. The barriers include intellectual property issues, especially for adjuncts, and possible use of recordings for evaluation. Also, the change that took place over the summer due to legal issues whereby faculty were no longer allowed to delete any class Zoom recordings, created an atmosphere wherein some faculty were uncomfortable recording their class. When recording a class is an accommodation issue the committee consensus on the previous point applies here too.

d. Student Teacher evaluations. One fact that arose is that the students think if they write a negative review of a teacher or a class it might affect their grade. The students were unaware that faculty can read their evaluations only after submitting their grades. This can be corrected with transparent information about the STA process.

e. A suggestion welcomed by the committee is to rethink the STAs to ensure that students can feel confident they are heard, and the faculty member can benefit from any constructive criticism either of their teaching skills or the class syllabus.
November 14, 2020

From: Robert Lapiner, Co-Chair, PP&TM

Re: PP&TM Committee Activities

The Personnel Policies and Tenure Modification Committee began the semester by starting to review the comprehensive new policies for tenure that have been developed by NYU-Abu Dhabi and supported by its faculty, and that had been forwarded to the T-FSC in the spring of last year.

However, our attention to NYU-AD was of necessity redirected immediately prior to the last T-FSC meeting to examine policies developed by the Grossman School of Medicine that call for a procedure uniquely designed for the GSOM in evaluating allegations of misconduct and determining the bases for the removal of tenure—and dismissal—for cause. There are two other related policies, concerning dismissal of tenure-track faculty members for cause, and procedures for lesser disciplinary actions against I tenured or tenure-track faculty for ‘infractions’ that don’t rise to tenure removal or dismissal.

It is to be noted that University guidelines require that any policy that is conceived not to complement but to supersede those of The Faculty Handbook must be approved by the President and the Trustees of the University.

Accordingly, PP&TM has prepared a document for the attention of the T-FSC at our November 19 meeting. It incorporates our committee’s observations and concerns in the usual fashion, namely as a running commentary on points that arise sequentially in the policies that have been submitted to our review. We encourage you to read it carefully in advance of our meeting, so that we can have a robust discussion. It is urgent that you do so because the President’s Office has requested feedback on the policies from the T-FSC no later than November 20th. Thus, any needed changes that arise at our meeting will have to be incorporated overnight to meet that deadline.

By way of summary, our Committee strived to flag the most salient issues we saw in the content and the verbal formulation of the three interrelated policies—providing some conjectural examples of problems we could anticipate, while striving to avoid any assumptions on our part about intent. To the Committee, the most critical issues involved these areas in particular:

1) The lack of clarity about the opportunities that T-Faculty had in the design of (and support for) these new policies, and a related concern about the anomaly—and the alarming precedent for the university as a whole—that GSOM C-Faculty had a majority/controlling voice in voting on these policies that pertain only to T-Faculty.

2) An underrepresentation of T-Faculty from other NYU Schools in the recommended hearing process (and the absence of any representation outside of the Health Sciences); as proposed, the Hearing panel would allow the GSOM representatives to have a majority voice in any decision—especially troublesome with respect to due process because all the GSOM faculty representatives proposed in the policy hold administrative positions to which they have been appointed by the Dean. We recommend an expansion of representation that would enlarge the GSOM cohort to include members voted upon by the T-Faculty.

3) Problematic language about the bases for allegations of cause—whether for the removal of tenure or lesser disciplinary actions. As formulated, key prefatory passages are so open-ended as to invite the potential for abuse—and at the least, to feed a climate of distrust.
Superblock Stewardship Advisory Committee Report, 11/11/20

At the last SSAC meeting, we discussed the reopening of the athletic facility at Palladium and terms of access. Perhaps this would be of interest to all T-FSC members:

Following the state's public health guidance, the decision was made to open the facilities starting the first week in November but to begin with access limited to students and by appointment only (to be able to control numbers). In the following few weeks, the Athletic Department will monitor usage with an eye toward expanding access to non-students as soon as it is safe and controllable. The same rules will apply as to limited numbers and by appointment only.

Re-opening the pool for swimming has proven more problematic, as we have not yet been able to fully meet the state's and city's restrictions in terms of cleaning protocols and usage of locker rooms and ancillary spaces as well as patterns of circulation. Here, too, however, we will continue to re-examine the situation and test out various cleaning scenarios to determine if we can re-open the pool at some point.

Everyone realizes that exercise is a more valued activity than ever, so as we have with all of our facilities, we will continue to try out scenarios, monitor and then move forward if we feel it is safe.

Tamar Schlick
SFAC Report
The SFAC met on 11/17/20. Vice Provost Tony Jiga made two presentations, attached. The first was on “Pay Equity Analysis” to find out whether there are inequalities in pay for women and minorities. The second was on “faculty salary inversion,” to find out whether higher ranked faculty are paid less than lower ranked faculty.

The first study was done by Charles River Associates (CRA). However, we were not shown the results of the study but rather a “slide deck for faculty” which Mr. Jiga said was the whole study. Moreover, Mr. Jiga explained that the results presented were not the results of the CRA study but rather an evaluation of the results by the law firm Orrick that was hired by NYU to do this evaluation.

The study attempted to evaluate the impact of gender and/or race/ethnicity on salary. It also included variables such as (i) primary job profile; (ii) on-primary job profile, when paid an administrative supplement; (iii) department; (iv) time at NYU; (v) prior experience; and (vi) whether the faculty holds a doctorate degree or terminal degree. It seems that the CRA study created salary predictions based on a gender/race-neutral model and compared them with actual salaries. This was done NYU-wide as well as within each School.

Orrick concluded that the CRA model “did not reveal any systemic disparities based on gender or race/ethnicity.” However, “select Schools were identified for further review for gender based on the initial findings of the model.”

A fundamental issue with this conclusion is that Mr. Jiga was unable to define the term “systemic disparities.” For example, one Senator asked hypothetically whether a 20% difference between the predicted pay and the actual pay for women constitutes a “systemic disparity.” Mr. Jiga said he did not know, and that the term “systemic disparity” is a term that lawyers use, which he was unable to define.

Many in the meeting felt that after a multi-year study, there was not much tangible substance in the report, which was just a summary prepared by lawyers. There were many questions asked of Mr. Jiga in the meeting, and more are being gathered. A key request is to receive the full CRA report, so that it can be evaluated in terms of its scientific merits. A key complaint was that the faculty did not have input in the parameters of the study. Mr. Jiga will return to participate in the February meeting.

The second study was on faculty salary inversion. This study was done internally by the Provost’s office. Despite earlier indications that the study was finished, Mr. Jiga indicated that study is not complete, and promised to complete the study and report on it by February next year. Under “next steps” he indicated that they include (i) “provide department-level data to deans”; and (ii) “establish University-wide parameters for evaluating cases of inversion and determining when compensation adjustments would be appropriate.” The last bullet point indicates that NYU may not make compensation adjustments when inversion is found but only “when appropriate.”
Retirement Committee Report

The retirement committee met twice this semester. The first meeting coincided in time with a TFSC meeting, and was attended by my alternate Senator, Prof. Robert Seamans. I attended the second meeting on 10/28/20. The key news to report from this meeting is that NYU will move forward in the Spring semester with a reduction of the number and re-alignment of the mutual funds that will be available to NYU faculty under the retirement programs of Washington Square, Dental School, and Langone SOM. The new program will be available in the fall 2021. Besides the funds offered within TIAA, there will be a third-party brokerage company where faculty could invest in many mutual funds not available through TIAA. The final terms of the array of funds available through the third party brokerage company as well as its commissions and fees for investments have not yet been determined yet so it is very hard to estimate the importance of that facility.

I asked about our request at the presentation of the retirement committee to TFSC in 2019-20 that information sector mutual funds become available through the TIAA NYU program. As you may recall, we had presented evidence that the standard passive large cap Vanguard fund in information technology (that includes Apple, Google, Facebook, Microsoft, Visa, MasterCard, and others) had an 80% higher return for the last 5 years than the best performing growth fund available at TIAA NYU, and therefore it was an excellent idea to include it in the offerings of TIAA NYU. Unfortunately, the retirement committee decided not to include any sectoral funds, thereby excluding information technology mutual funds. In my opinion, this is a major error because the 4th industrial revolution is in information technology and not all sectors of the economy, and therefore, on the average, information sectoral funds will perform better than the rest of the economy as they have performed for a decade. However, because of our observer status in the retirement committee, we could not vote on this issue.
New York University
Pay Equity Analyses
Non-Medical School Faculty
Presented: November 17, 2020

Charles River Associates
Purpose of Analyses

• Proactive pay audit of NYU’s U.S. Non-Medical School Faculty conducted under direction of the Orrick law firm
• Analyses are focused on Full Professors, Associate Professors, and Assistant Professors
  – Tenure, Tenure Track, and Continuing Full-time Non-Tenure Track faculty were reviewed
• Analyzed the following protected and comparator groups to assess group differences in pay
  – Female v. Male
  – African American v. White
  – Asian v. White
  – Hispanic v. White
• Focus was on primary base salary plus administrative supplements as of August 31, 2019
About CRA Labor & Employment

Charles River Associates (CRA) is a leading global consulting firm that offers economic, financial, and strategic expertise to major law firms, corporations, accounting firms, governments, and colleges/universities. CRA’s Labor & Employment practice is engaged in a variety of employment matters with focus areas in employment discrimination, pay equity, and wage & hour matters.

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Dr. David Lamoreaux has a Ph.D. in economics (with an emphasis in labor economics, econometrics, and industrial/organizational economics) and has been a Vice President with CRA’s Labor & Employment practice for 13 years (23 years as a labor economist). Taylor Leverette is a Senior Associate with CRA’s Labor & Employment practice (having worked at CRA for over 5 years) and has an M.S. in applied economics.
Overview of Process

• Met with faculty representatives on the following dates to define the study parameters
  – April 10, 2019 - Meeting with CRA that included faculty participants
  – May 6, 2019 - Meeting without CRA that included faculty participants
• Worked with NYU and Orrick to obtain requisite data and information
• Validated data with NYU subject matter experts in the Provost's Office
• Prepared analytic database
• Conducted initial School-level risk assessment of pay
• Prepared charts identifying outlier faculty
• Subject matter experts in the Provost's Office reviewed outlier faculty and discussed with the Schools as needed
• Subject matter experts in the Provost's Office provided revised pay for outlier faculty, as appropriate
Populations Excluded from the Models

- Other Full-Time Faculty
  - NYU and CRA agreed to exclude faculty with appointments of limited duration.
- Faculty on unpaid leave
- Faculty with the Rank of Lecturer/Instructor
- Other one-off faculty identified by NYU
  - Some examples of faculty excluded were planned terminations, faculty on uncompensated appointments, etc.
Factors Included in the Model

• Gender or race/ethnicity
• Primary job profile
• Non-primary job profile, when paid an administrative supplement
• Department
• Time at NYU
• Prior experience
• Whether the faculty holds a doctorate degree or terminal degree
Process and Findings

• The statistical model developed was used to predict salary for each faculty member based on a gender/race neutral model.
  – The faculty member's actual salary was then compared with the predicted salary, and those with larger statistical differences were reviewed for factors not included in the analysis.
• Models were run by School using the identified control factors.
• The pay equity review did not reveal any systemic disparities based on gender or race/ethnicity.
  – Select Schools were identified for further review for gender based on the initial findings of the model.
  – There were no Schools identified for further review for race/ethnicity.
• The pay equity review did reveal a small number of individual positive and negative pay differences that were reviewed and addressed, as appropriate.
Introduction
Tenured/Tenure-track Faculty
Salary Inversion Methodology – Tenured/Tenure-track Faculty
Contract Faculty
Salary Inversion Methodology – Contract Faculty
Next Steps