

Here is the proposed wording of Section III (C) (1) (d) (ii) contained in Amendment 3:

"The Procedural Review Committee shall review the charges, consult with the Chief Compliance Officer, with regards to allegations of discrimination, determine whether all parties appear to be acting in good faith (as defined in Section III(F)(1)(b)(iv)), and seek to settle the matter to the satisfaction of all concerned. If the matter cannot be settled, and if the Procedural Review Committee determines that there is reason to believe the allegation of discrimination, the matter will be investigated in accordance with the procedure for investigation of discrimination complaints."

I propose changing it to the following:

"The Procedural Review Committee shall review the charges, consult with the Chief Compliance Officer, with regards to allegations of discrimination, determine whether all parties appear to be acting in good faith (as defined in Section III(F)(1)(b)(iv)), and, if the Procedural Review Committee deems a settlement to be possible and appropriate, seek to settle the matter to the satisfaction of all concerned. If the matter cannot be settled, and if the Procedural Review Committee will determine whether determines that there is reason to believe the allegation that the decision against renewal or promotion was based on considerations constituting discrimination. The Procedural Review Committee will report its determination to the Chief Compliance Officer for investigation in accordance with the procedure for investigation of discrimination complaints."

Why these changes?

1. In some cases, a settlement is inappropriate or hopeless. The revised wording gives the PRC some latitude in determining whether to pursue a settlement, and identifies who gets to decide whether a settlement can be reached.
2. Section III (C) (1) (d) (i) says that the PRC is to consider the following allegation: "that the decision against renewal or promotion was based on considerations constituting ...discrimination in violation of College non-discrimination policy." Section III (C) (1) (d) (ii) says that the PRC is to determine whether there is "reason to believe the allegation of discrimination"—not the allegation that the decision against renewal or promotion was based on considerations constituting discrimination as in section III (C) (1) (d) (i), but the allegation of discrimination per se. As we came to realize last spring, these two allegations are not necessarily the same: it is possible for someone to have been discriminated against, and for that discrimination to have played no role in the decision against renewal or promotion. My proposal brings the language in section III (C) (1) (d) (ii) into line with section III (C) (1) (d) (i).
3. The language in the proposed amendment says that "the matter will be investigated in accordance with the procedure for investigation of discrimination complaints" if the PRC determines that there is reason to believe the allegation. But I would think that the Chief Compliance Officer should be free to investigate an allegation of discrimination per se regardless of what the PRC determines about the role of discrimination in a decision against tenure or promotion, especially considering that the PRC does not figure at all in the proposed procedures for investigating discrimination. My proposal requires the PRC to notify the Chief Compliance Officer of the PRC's determination, and leaves the Chief Compliance Officer free to conduct an investigation regardless of what the PRC determines.