

**Proposed Amendment to Faculty Handbook
Provisions Relating to Discrimination Complaints/Investigations**

AMENDMENT #1: Delete reference to Equal Opportunity Committee (Section II(E)(5)).

Explanation: This Committee shall no longer have a role in adjudication of faculty complaints/grievances/appeals.

AMENDMENT #2 Section III(B)(1). Revise as follows:

The College of William and Mary is an equal opportunity employer ~~(see the College's Affirmative Action Plan, currently under revision)~~. The College recruits, appoints, retains and promotes faculty members in accordance with all federal and state nondiscrimination laws and regulations, and with the College's ~~Discrimination and Affirmative Action~~ Policies. ~~Failure to comply with federal and state non-discrimination laws and regulations shall be handled in accordance with provisions in the Faculty Handbook Sections III.C.1.d.1. and III.F.2.~~

Explanations:

1. The documented Affirmative Action Programs currently are not readily available (e.g., online). While this may change, Handbook reference is not necessary.
2. The reference to discrimination compliance is not necessary in this location of the Handbook, e and cross-references will change as reflected in following amendments.

AMENDMENT #3 Section III(C)(1)(d) (Appeals by Tenured or Tenure-Eligible Faculty Members of Decisions Not to Renew, Tenure, or Promote) -- Revise text to read as marked:

A candidate whose contract has not been renewed or who has been denied tenure or promotion may request reconsideration by the decision-making authorities. The request shall set forth the basis for reconsideration in detail. In addition, candidates may file a formal appeal on these two grounds: (i) violation of academic freedom or policies governing non-discrimination; and/or (ii) failure to follow procedure. Following the review procedures described below, should the College's Faculty Hearing Committee or the Procedural Review Committee find that a candidate has been discriminated against, that his or her academic freedom has been violated, or that there has been a failure to follow procedure in his or her case, that candidate has the right to have the decision reconsidered. In cases in which no evidence of violation of academic freedom, discrimination, or failure to follow procedure is found, reconsideration of a decision not to renew a contract or against tenure or promotion can be undertaken only with the approval of the Provost.

i. Appeal on Grounds of Violation of Academic Freedom or of Discrimination

If a faculty member alleges that the decision against renewal or promotion was based on considerations constituting (1) violations of academic freedom or (2) discrimination ~~with respect to race, sex (including pregnancy), religion, color, national origin, disability, veteran status, sexual orientation, or age in violation of College non-discrimination policy,~~ the allegation shall be given preliminary consideration by the Procedural Review Committee, in consultation with the Chief Compliance Officer with respect to allegations of discrimination. The allegation, with supporting information, may be filed with the Procedural Review Committee only after receipt of the letter from the Provost or President informing the faculty member of the decision; the allegation must be filed no later than thirty calendar days after receipt of such letter. The allegation shall be accompanied by a statement that the faculty member agrees to the presentation, for the consideration of the faculty committees, of such reasons and evidence as the College may assert in support of its decision. Requests for reconsideration of an interim review or a tenure or promotion case on grounds of violation of academic freedom or of discrimination may be filed only with the Procedural Review Committee and with no other College committee.¹

¹ These procedures are not intended to impair or limit the right of anyone to seek remedies available under state or federal law. Since federal and state procedures require that complaints of discrimination be filed within specific deadlines, individuals who pursue the internal complaint procedures described in III.C.1.d.i. may fail to meet state and federal guidelines for filing a complaint. Accordingly, a complaint may be filed with an external agency in order to meet state and federal agency deadlines without jeopardizing one's right to a College hearing.

The Procedural Review Committee shall review the charges, consult with the Chief Compliance Officer, with regards to allegations of discrimination, determine ~~that whether~~ all ~~parties-parties appear to be~~ bargaining-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. If the Procedural Review Committee determines that there is reason to believe the allegation of ~~or~~ violation of academic freedom, the matter will be heard by the Faculty Hearing Committee in the following manner.² If a faculty member appeals on both bases, the Provost shall determine which manner of resolution is best suited to resolve the matter.

(A) The Faculty Hearing Committee may, with the consent of the parties concerned, hold joint pre-hearing meetings with the parties in order to (1) simplify the issues, (2) determine which facts the parties can agree upon, (3) provide for the exchange of documentary or other information, and (4) achieve such other appropriate pre-hearing objectives as will make the hearing fair, effective, and expeditious.

(B) Service of notice of hearing with specified charges in writing will be made at least twenty calendar days prior to the hearing. The recommending authorities who made the decision not to renew or promote the faculty member may waive their right to participate in the hearing and may respond to the charges in writing at any time before the hearing. If the responding party or parties waive their hearing rights, but deny the charges or assert that the charges do not support a finding of a violation of academic freedom ~~or of nondiscrimination policies~~, the Faculty Hearing Committee will evaluate all available evidence and rest its recommendation upon the evidence in the record.

(C) The Faculty Hearing Committee, in consultation with the President, the faculty member making the complaint, and the responding party or parties, will exercise its judgment as to whether the hearing should be public or private.

...

(G) The faculty member making the complaint is responsible for stating the grounds of the allegations and shall bear the burden of proof. If the faculty member presents sufficient evidence to prove that the decision not to renew, tenure, and/or promote was based on

² Following the "Recommended Institutional Regulations on Academic Freedom and Tenure." American Association of University Professors. Policy Documents and Reports, 10th ed. Washington, D.C., 2006: 26. 1 June 2008.

considerations violating academic freedom ~~or constituting discrimination~~, it is incumbent upon those who made the decision to come forward with evidence in support of their decision. The Faculty Hearing Committee will not be bound by strict rules of legal evidence, and may admit any evidence which is of probative value in determining the issues involved. Reasonable effort will be made to obtain the most reliable evidence available.

...

(L) The Faculty Hearing Committee shall render a judgment based upon the evidence admitted at the hearing or hearings. The findings of fact and the decision shall be based solely on the record as a whole and shall be in writing. If the Faculty Hearing Committee concludes that a violation of academic freedom ~~or of nondiscrimination policies~~ has occurred, it will so report in writing to the faculty member and to the President. If the President rejects the report, the President will, in a timely manner, state the reasons for doing so, in writing, to the Faculty Hearing Committee and to the faculty member, and will provide an opportunity for response from the faculty member and/or the Committee. If the President accepts the report, the President shall indicate the point in the process at which reconsideration is to begin and shall recommend to the relevant administrative authorities, in writing and with supporting reasons, appropriate relief. If the Faculty Hearing Committee concludes that a violation of academic freedom ~~or of nondiscrimination policies~~ has not occurred, it will so report in writing to the faculty member and to the President. The Committee's decision shall be final.

Explanations and Notes:

1. This Handbook section creates a separate procedure for handling certain types of discrimination complaints, i.e., those alleging that a failure to promote or to grant tenure is discriminatory. To help ensure that such a complaint is fully assessed and that faculty rights are protected, the amendment proposes consultation with the Chief Compliance Officer. The amendment would not change the decision-making authority of the PRC.
2. This Handbook section specifies that appeals alleging discrimination that are determined to have merit ("reason to believe") by the PRC are then submitted to the FHC. The amendment proposes that such appeals, when determined to have merit be processed through the revised discrimination complaint procedure. This procedure also culminates in judgment by the FHC, but permits fuller investigation prior to the hearing.
3. Several conforming changes and clarifications.

4. **Note:** the highlighted language appears to be inconsistent with earlier language in this Section III(C)(1)(d), which specifies the notification of non-tenure/renewal/promotion coming from the Dean. See second full paragraph of this sub-section (d). No amendment proposed.

AMENDMENT #4: Section III(F)(1)(a), Scope: **Revise text to read as marked:**

- a. **Purview.** The procedures spelled out in this section of this Faculty Handbook and the College procedures for investigating discrimination shall be the sole method for investigating and/or resolving any complaint against a faculty member.

AMENDMENT #5: Section III(F)(1)(b), Definitions: **Revise text to read as marked:**

ii. The *Administrative Officers* empowered to receive allegations and to initiate inquiries are the program director, chair, and/or Dean to whom the faculty member reports; and the Provost. (Allegations of discrimination or discriminatory harassment may also be made to the ~~Director of Equal Opportunity, the Director of Human Resources, or the Dean of Student Affairs~~ specified in applicable complaint/investigation procedures; subject to the limitations listed in [III.F.2.a.ii](#) hyperlink).

~~iii. The *Deciding Official* is the administrative officer who makes the final determination that a policy has been violated and decides on the appropriate institutional action. In cases in which the complaint is resolved during the stage of informal investigation and mediation, the deciding official may be the Dean, the Director of Equal Opportunity (in cases alleging discrimination or discriminatory harassment), or the Provost. In cases in which the complaint is resolved during an inquiry, the deciding official may be the program director, chair, or Dean, the Director of Equal Opportunity (in cases alleging discrimination or discriminatory harassment), or the Provost. IN cases that proceed to the stage of formal investigation and resolution, the deciding official shall be the Provost, the President, and/or the Board of Visitors (see the specific procedures outlined in III.F 2 through 6 below).~~

Explanation:

1. The Director positions specified have been eliminated or renamed. Rather than update to reflect the full list of individuals to whom complaints may be made, which will require regular updating not feasible for the Faculty Handbook, the amendment proposes referencing the relevant procedures.
2. The amendment proposes deleting the definition of Deciding Official. The definition is outdated and not used in the Handbook.

AMENDMENT #6: Section III(F)(1)(b), Definitions: Make conforming changes to numbering of definitions.

AMENDMENT #7: Section III(F)(1)(j). **Revise text to read as marked:**

Formal Investigation and Resolution. Formal investigation of charges may ensue when no settlement is reached during informal investigation and mediation, and/or when the appropriate officer and/or the body conducting the information investigation concludes that the alleged violation is sufficiently grave and the evidence supporting the allegations is sufficiently convincing to warrant major sanction, as defined in Section III.F.1.b.viii.

~~i. In cases alleging discrimination or discriminatory harassment by a faculty member, the formal investigation will be conducted by the Equal Opportunity Committee (see III.F.2.d. below), and their recommendations forwarded to the Faculty Hearing Committee; the Faculty Hearing Committee will find for or against the faculty member and may, in the latter instance, recommend a sanction.~~

~~ii. In all other cases, ¶~~The investigation will be conducted by the Faculty Hearing Committee (see III.F.3.e. and 4.c. below); the committee will find for or against the faculty member and may, in the latter instance, recommend a sanction.

AMENDMENT #8: Section III(F)(2), “Discrimination or Discriminatory Harassment.” **Delete this section in its entirety. Make conforming changes to numbering (change 3 on page 59 to 2, change 4 on page 78 to 3, change 5 on page 70 to 4, 6 on page 72 to 5.**

Explanation: This Section includes a summary of discrimination policy and the procedure for investigating complaints. The policy summary is outdated and inaccurate.

The amendment proposes a new procedure for investigating complaints. This procedure is detailed and specific, and it would be prudent to anticipate the need for regular updating of the procedure. For this reason, the amendment proposes the procedure as a separate, stand-alone procedure, rather than a section of the Faculty Handbook.