PROPOSED AMENDMENT TO FSRR 7.3
APPROVED BY FACULTY SENATE EXECUTIVE COMMITTEE (FACEX) FEBRUARY, 2, 2016

Rationale:
The recommended revisions include eliminating the requirement that the “grounds for an appeal are limited to allegations that action by an administrative authority violated established University procedures and adversely affected faculty rights.” Additionally, the recommended revision ensures that all procedures should conform to the due process guarantees enumerated in the University Senate Code. FRB members believe that the University Senate Code gives FRB the right to hear these grievances.

Draft 1 FSRR 7.3

The text below is FSRR 7.3 as it currently appears in the Governance document in the Policy Library. Strikethrough indicates language that would be deleted. Bold indicates language from the Handbook Task Force subcommittee report and the Faculty Rights Board.

Section 3. Faculty Rights Board

7.3.1 Jurisdiction

The Faculty Rights Board shall have jurisdiction as provided in Article XIII, section 3, of the University Senate Code to conduct hearings and consider appeals by faculty members of administrative actions involving infringing on the established faculty rights, responsibilities and conduct, when a written appeal is submitted and received by the Faculty Rights Board within fourteen days of the administrative action being appealed contested. Appeals from denial of promotion and tenure shall not be subject to these provisions but instead shall be governed by Article VI, section 8 of the Faculty Senate Rules and Regulations. The Board shall provide for timely disposition of appeals, although it may also provide for deadline extensions in particular cases for good cause.

7.3.2 Procedures.

The Faculty Rights Board shall develop written procedures to govern hearings and appeals within its jurisdiction, other than appeals from denial of promotion and tenure governed by Article VI, section 8 of the Faculty Senate Rules and Regulations. Procedures must conform to the due process guarantees in University Senate Code Article XII Section 2. To become effective, such procedures, and any subsequent amendments to them, require approval only by the Faculty Senate and the Chancellor.

The procedures adopted by the Faculty Rights Board shall:

a. Be in writing and publicly available.

b. Provide an opportunity for informal settlement, including mediation if the parties agree.
c. Provide initiation of procedures by means of a written complaint or appeal by the complaining or appealing party that states the grounds of the complaint or appeal and the basis for the jurisdiction of the Faculty Rights Board, and shall provide a reasonable opportunity for the opposing party to respond. Require that the appealing party state in writing the grounds for the appeal and the basis for the jurisdiction of the Faculty Rights Board. The opposing party shall have a reasonable opportunity to respond. The grounds for an appeal are limited to allegations that action by an administrative authority violated established University procedures and adversely affected faculty rights. Administrative authorities include tribunals formed within the University to hear and rule on faculty grievances.

d. Provide an opportunity for a hearing on contested issues of fact that are necessary to decide the case, except that the Faculty Rights Board, at its discretion and after initial review of the case, may: (1) dispense with a hearing on factual issues that are not disputed or not material to the dispute; (2) dismiss the complaint in accordance with the grounds and requirements listed in U.S.R.R. 6.5.3 for dismissal of grievances by the Judicial Board; and (3) decline to hear an appeal from the factual determinations of another tribunal established by faculty governance and comporting with due process principles. A hearing shall be defined as (1) discussion of written appeal materials and requests for information from one or both sides and/or (2) verbal testimony and cross-examination of witnesses.

Provide to an appellant and opposing parties a fair opportunity to present their cases and arguments in a hearing before the Faculty Rights Board if the Board has determined that the allegations in the appeal are sufficient to warrant a hearing. The Board may dismiss an appeal in accordance with the grounds and requirements listed in USRR 6.5.3 for dismissal of grievances by the Judicial Board, and also may dismiss an appeal if the appellant fails to provide information requested by the Board within seven days of the Board’s request. At a hearing, the evidence and testimony considered by the Board shall be limited to how the administrative authority’s action violated established University procedure and how the alleged violation adversely affected the faculty member’s established rights. The Board shall not conduct a hearing to review factual issues that are not disputed or are not material to the dispute.

e. Provide for the initiation of a hearing, if one is deemed necessary, within forty-five (45) days of the appeal being filed absent good cause for an extension of time.

f. At any hearing on contested issues of fact held pursuant to these procedures, the parties shall have the opportunity to present the testimony of witnesses and to cross examine witnesses, subject to the authority of the chair to provide for the orderly conduct of the hearing and exclude testimony that is irrelevant or otherwise improper. At any hearing or appeal held pursuant to these procedures, the parties shall be afforded a fair opportunity to present their case and arguments to the Faculty Rights Board.

Provide that the burden of proof is on the appellant to prove by clear and convincing evidence that there has been a violation of established university procedure and that the violation adversely affected an established faculty right.
g. Provide for confidential treatment of matters that are at issue in an appeal. Before a hearing, the Faculty Rights Board members may not discuss the facts or issues in the case with a party, unless the Chair first notifies the opposing party and provides an opportunity for the opposing party to be present. In addition, Faculty Rights Board members may not discuss the facts or issues in the case with any non-party except to the extent that doing so may be authorized by applicable rules and regulations and with notice to both parties prior to any discussion.

h. Be based on a presumption that any hearing shall be closed to the public if it requires consideration of confidential personnel matters. The Faculty Rights Board may make an exception, however, if the individual or individuals whose confidential information is involved request in writing that the hearing be open to the public.

i. Stipulate that hearings will be electronically recorded.

7.3.3 Decision

7.3.3.1 After a hearing or appeal, the Faculty Rights Board shall deliberate and determine, by majority vote, its decision on the issues raised by the case whether the appellant has proved by clear and convincing evidence that the administrative action violated established University procedure and whether the violation adversely affected an established faculty right. A written decision stating the conclusions of the Faculty Rights Board and the reasons for them, as well as any recommended actions to be taken, shall be provided to the parties, the Provost, the Chancellor, and any other administrative officials involved in the case no later than fourteen days after the hearing is completed.

7.3.3.2 The decision of the Faculty Rights Board constitutes a recommendation to the Chancellor, who has the final authority and responsibility for personnel decisions within the University, or to the Provost when the Chancellor has delegated such authority to the Provost. The Chair of the Faculty Rights Board may respond to inquiries from the Chancellor or Provost to clarify the basis or intent of the Board’s decision and recommendations. After review of the recommendation and supporting documents, the Chancellor, Provost, or other administrative official shall provide timely written notice of the final decision to the parties and to the President of the Faculty Senate and the Chair of the Faculty Rights Board. There is no appeal within the University from the decision of the Chancellor.