

Article VI Task Force Report

December 19, 2012

Submitted by:

Vince Barker  
John Broholm  
Mohammed El-Hodiri  
Judith Emde  
Ken Fischer  
Jennifer Gleason  
Megan Greene  
Mary Lee Hummert  
Mike Kautsch  
Margaret Marco  
Tom Prisinzano  
Mike Roberts  
Susan Twombly, Chair

## Article VI Task Force: Summary of Recommendations:

### Charges 1 and 2

- The process has become more transparent.
- There is still a lack of clarity with some aspects of the process and with communication between units and candidates.
- Overall tenure rates have remained unchanged.

### Charge 3

- Although there is little evidence that the current timeline negatively affects the appeal process, the Task Force provides an alternative that would give candidates additional time to file and prepare an appeal while shortening the time UCPT and Chancellor have to complete their reviews.

### Charge 4

- The Task Force recommends against creating a formal opportunity for a second appeal to the Chancellor in rare instances.
- The Task Force recommends allowing candidates to appeal simultaneously to FRB on one of the grounds specified in 6.8.1 and to provide a written response based on the merit of the case directly to the Chancellor.

### Charge 5

- The Task Force recommends against adding additional grounds for appeal.
- The Task Force recommends charging FRB with the task of developing means to assist faculty and others to interpret the nature and scope of grounds for appeal of negative tenure decisions.

### Additional Recommendations:

- Better communication is needed between units and candidates during pre-tenure, progress toward tenure review, and the annual review process about their progress toward tenure.
- Add a provision to Article VI 6.5.4 and 6.6.3 whereby the chair and dean rationale for concurrence with a negative recommendation or lack of concurrence with a positive recommendation must be communicated in writing to the candidate along with the unit summary.
- The Provost's P&T instructions should provide examples of more detailed rationales for unit recommendations based on unit criteria for promotion and tenure.
- Consider changing the rating scale used in P&T process.
- The Provost's Office should provide a detailed annual calendar of P&T events and deadlines to units and candidates.

## **Article VI Task Force Report**

Members: Vince Barker, John Broholm, Mohammed El-Hodiri, Judith Emde, Ken Fischer, Jennifer Gleason, Megan Greene, Mary Lee Hummert, Mike Kautsch, Margaret Marco, Tom Prisinzano, Mike Roberts, and Susan Twombly, Chair

### **Charge**

The Article VI Task Force was charged to examine the FSRR guiding promotion and tenure (Article VI). Specifically the Task Force was charged with the following:

...to review the overall promotion and tenure procedures described in FSRR Article VI and in particular to:

- 1) review the experiences with the new procedures,
- 2) collect multiple perspectives and analyses from persons and committees involved in the process in a variety of ways,
- 3) consider the timeline for appeals of negative promotion and tenure decisions,
- 4) consider the possible introduction of a second opportunity, in rare instances, to appeal a negative tenure decision after the Chancellor's decision is made,
- 5) consider the scope and limitation on FRB's actions in appeals of negative tenure decisions, which is now limited to procedural violations.

FacEx believed that sufficient time had passed between implementation in 2007-08 of the Article VI revisions to warrant reflection and change if necessary.

### **Task Force Process**

The task force was instructed not to engage in a full-scale review of Article VI but to concentrate on the provisions related to appeals and any other related provisions. The Task Force did not review FRB procedures.

The task force met 7 times during the fall semester for at least 1 hour and usually for 90 minutes. Minutes were kept and most meetings were recorded.

### **Recommendations**

Results and recommendations are organized by charge.

**Charge # 1: Review the experiences with the new procedures**

**Charge # 2: Collect multiple perspectives and analyses from persons and committees involved in the process in a variety of ways.**

To address charges #1 and #2 the Task Force heard presentations from the following:

- Rick Levy, Chair, Task Force on Promotion and Tenure, about rationale for changes to Article VI
- Bill Keel, Chair, SPPT, about process, issues, problems with policy approval and trends noted in policies/process
- Mary Lee Hummert, VP Faculty Development, about the promotion and tenure process, documents, timelines, etc.
- Mike Kautsch, past chair, FRB, summarized appeals and process over 10 year period
- Consulted with Sara Trower, University Counsel's Office

We reviewed the following documents:

- Article VI
- Grounds for appeal at a sample of comparable research universities
- FRB guiding documents

Finally, we considered the diverse experiences of Task Force members themselves.

Observations from this review:

- The tenure process is more transparent than it was.
- A third grounds for appeal was added in the Article VI revisions.
- At the time we met with SPPT, approximately 1/3 of unit promotion and tenure policies had not been approved.
- The overall tenure rate has remained unchanged or gotten better
  - Before Article VI revisions went into effect, the mean tenure success rate was 90%; range, 80% to 96%.
  - Since changes to Article VI, the mean tenure success rate is 90%; range, 87% to 97%.
  - There have been 27-45 (M = 36) tenure cases per year since the changes to Article VI went into effect.
- Since the 2007-2008 tenure review (when the Article VI changes went into effect) through the 2011-2012 tenure review
  - 19 of the 179 candidates were not recommended for tenure.
  - 7 of those candidates appealed the recommendation to the FRB.
    - one appeal of tenure denial was withdrawn
    - grounds for six appeals were found insufficient
  - The majority of the remaining 12 individuals who were not recommended for tenure submitted additional information for the Chancellor to consider before making her decision.
- Communication between units and candidates, particularly with respect to poor performance and negative tenure decisions is perceived to be a continuing problem.

**Charge #3: Consider the timeline for appeals of negative promotion and tenure decisions.**

The appeals timeline was discussed with an eye to providing more time for the candidate to prepare an appeal while preserving adequate time for FRB to consider appeals and hold hearings if necessary. The Task Force is mixed on whether the current timeline constitutes a problem. The perception of the past chair of FRB is that there is little evidence that the current 10 days has resulted in poorly prepared appeals.

The Task Force recommends the following as a potential alternative timeline, which adds about 5 days to the time in which a candidate has to initiate an appeal:

	<b>Current</b>	<b>Proposed</b>	<b>Art VI Section</b>
Letters from UCPT to candidates	First Friday in March	Always March 1 or next business day	6.7.4.5
Initiation of appeal	Ten days from first Friday	Always March 15 or next business day	6.7.5, 6.8.2
University response	7 days from first Friday	March 22 or next business day	
FRB completes appeals	Not later than April 15	Not later than April 22 or next business day	6.8.4
Chancellor final decision/notification	Around May 1	Likely a week later	

These changes require relatively minor changes to Article VI. See appendix A for suggested changes.

**Explanation and rationale:**

The proposed changes shorten UCPT’s work time on the front end by as much as 10 days and also shorten the Chancellor’s time to review files by a week to 10 days, while giving candidates as much time as is feasibly possible to file an appeal. The proposed changes (1) do not adversely affect candidate preparation and unit review time on the front end (although UCPT may find it necessary to reduce time candidates have to provide a response to a request for information), (2) allow a final decision to be made within AAUP recommended guidelines (at least 12 months before the end of the terminal year), (3) conform to the Kansas Board of Regents rules assigning the Chancellor the final agency action and 4) by setting firm dates, deadlines may be clearer to faculty members.

In order to complete the tenure and promotion review and decision process in keeping with KU and AAUP recommended timelines (by the end of the academic year in which a person is being considered for tenure and or promotion), there are very few degrees of

freedom. It is important not to shorten the time in which the candidate has to prepare his or her materials or the time in which the initial and intermediate levels have to complete their reviews. To do so might have the unintended consequence of resulting in less complete materials or less carefully considered decisions.

Although there is no clear evidence that 10 days is insufficient time in which to prepare an appeal, the Task Force was sympathetic to the notion that candidates who have just received negative recommendations need as much time as possible to make a decision about whether they should appeal and to prepare their appeal. The alternative with the fewest potential negative consequences seemed to be squeezing time out of UCPT by setting March 1 as the firm date by which UCPT must communicate its recommendations to the candidates. Currently, UCPT deadline for decision-making varies depending on the date of the first Friday. Setting March 1 as the firm deadline for UCPT decisions to be delivered, extending the time to appeal to March 15 and still allowing FRB about the same amount of time to review appeals, shortens the Chancellor's time to review and make the final decisions or extends by a week or so, the date by which she renders her final decisions. The other potential downsides to changing the dates are (1) that using March 1 or the next business day shortens the time that UCPT, the committee which has the largest number of applications, has to conduct its review 6 out of 7 years; (2) that using March 1 or the next business day (and March 15 or the next business day) creates more ambiguity than specifying the first Friday in March (and 10 days after the first Friday in March) because the day of the week will change every year and in 2 out of every 7 years the dates will change as well; and (3) Changing the timeline might also reduce the time candidates are given to respond to requests for information.

The question for FacEx is whether the upside of providing extra time for the relatively few appeal cases per year outweighs the potential stress placed yearly on UCPT and the Chancellor.

Other changes we recommend below may mitigate the time issue to some extent.

**Charge # 4: Consider the possible introduction of a second opportunity, in rare instances, to appeal a negative tenure decision after the Chancellor's decision is made.**

The Task Force recommends:

- Against creating a formal opportunity for a second appeal.
  - Rationale: According to University Counsel, the Chancellor now has the right to reconsider a negative decision at any time should substantial new information arise warranting such a reconsideration. Additional attempts to formalize this could negatively affect candidates (e.g., by specifying a time limit).

- Adding a provision to Article VI that would allow candidates to submit a written response to the Chancellor and an appeal to FRB simultaneously. Currently candidates have to choose one or the other, which seems to cause confusion.
  - Candidates would have to indicate by the specified deadline (10 days from first Friday or March 15 or next business day) to whom they were appealing: Chancellor, FRB or both. The Chancellor would not act on the written response until FRB has rendered its decision and she receives the entire package. The proposed change provides a candidate the opportunity to exhaust all possibilities and would seemingly do no harm. We discussed allowing candidates to file an appeal to the Chancellor after FRB makes its determination, but agreed that extending the timeline for appeal too much was problematic.
  - Key to this change is specifying the basis for appeal to each.
  - Proposed new language for 6.7.5: *A candidate must initiate the appeal process by (10 days after the first Friday in March or March 15 or the next business day (proposed timeline) of the academic year in which the candidate is being considered for award of tenure and/or promotion in rank. A candidate may appeal to the Faculty Rights Board alleging violation of one or more of the three grounds specified in 6.8.1, may appeal on the merits of the case in the form of a written response directly to the Chancellor, or appeal to both simultaneously. In the case in which a candidate chooses to do both, the appeal to the Chancellor will be held by the Provost until the matter is resolved in FRB or (April 15 or April 22) or the next business day of the academic year in which the candidate is being considered for award of tenure and/or promotion in rank at which time all records pertaining to the candidate will be submitted to the Chancellor for final decision.*
  - By clarifying the nature of appeals that go to FRB and to the Chancellor and by allowing an individual the opportunity to appeal to both simultaneously rather than choosing, the Task Force believes several problems may be “solved.” A candidate would not have to worry about whether they were appealing to the “right” place or not and would not lose the option of appealing directly to the Chancellor if FRB decides against the appellant. In addition, such a clarification may result in clearer and more relevant appeals being submitted to FRB, thus making their review of a case easier. One potential concern is that this change could result in increased workload for FRB (e.g., The five candidates who only sent written responses to the Chancellor would also appeal to FRB.) If this change is adopted its effects on FRB workload should be monitored.

**Charge #5: Consider the scope and limitation on FRB's actions in appeals of negative tenure decisions, which is now limited to procedural violations.**

Article VI now includes three grounds for appeal, which according to FRB, have all been invoked in recent appeals. They are:

6.8.1.1 The merits of a case could not be fairly heard because of a violation, at one or more levels of review, of procedures established in this Article or approved pursuant to its provisions.

6.8.1.2 The grounds for the recommendation at one or more levels of review constitute a violation of the candidate's academic freedom.

6.8.1.3 The merits of the case could not be fairly heard because of the demonstrable application at one or more levels of review of standards or criteria other than the standards established in this Article or criteria approved pursuant to its provisions.

The Task Force recommends:

- Not adding new grounds for appeal.
  - Rationale: Article VI already includes three grounds for appeal. A review of grounds for appeal at a sample of peer institutions suggests that KU's grounds for appeal are consistent with those of peer institutions. The Task Force considered two additions: "unfair impediment" to establishing a scholarly record necessary for tenure (e.g., very heavy teaching or service load) and discrimination. It appears that both have been argued in recent appeals under existing grounds. The task force was concerned that adding "unfair impediment" could result in FRB rehearing a case on its merits, which technically it does not do now. Ultimately, the Task Force members in attendance agreed that both are covered in the existing three grounds for appeal as currently enacted.
- Charging FRB with the task of developing means to assist faculty and others to interpret the nature and scope of grounds for appeal of negative tenure decisions. One possible means for doing this would be for FRB to use results of past cases to provide examples of what kinds of claims have been made consistently, which are viewed as more or less successful, and to provide suggestions as to which grounds for appeal are appropriate for certain kinds of complaints.
  - Rationale: There is consensus that faculty members have insufficient information about the existing grounds for appeal, what kinds of claims can be made under each, and the appeal process itself. FRB is the correct body to tackle this task. This, too, may help enhance the clarity and validity of the cases made for FRB and/or the Chancellor.

**Additional Recommendations**



The promotion and tenure process is complex. A consistent theme running through task force meetings was that communication at various levels about various aspects of the process is a major concern. Of particular concern is the perception that candidates do not receive accurate information throughout the process, which puts them at a disadvantage in knowing whether to file an appeal, to which body (FRB or Chancellor) one should appeal, or even how to craft an appeal to fit in the three stated grounds for appeal. In addition to clarifying recommendations made above, the task force recommends reviewing existing processes and procedures and creating ones that would:

#### Pre-tenure

- Emphasize the importance of candidates receiving sufficiently detailed and honest information about their performance in mid-tenure review, annual evaluations.

#### Tenure process

- Add a provision to Article VI 6.5.4 and 6.6.3 whereby the chair and dean rationale for concurrence with a negative recommendation or lack of concurrence with a positive recommendation must be communicated in writing to the candidate along with the unit summary. Articles 6.5.4.3 and 6.6.3.3 indicate that the dean shall communicate the recommendations of the initial (or unit) review to the candidate but do not indicate whether the reasons for the dean's lack of concurrence with a positive recommendation or support for a negative recommendation must be communicated to the candidate. (See Appendix B for suggested language.) The Task Force was unanimous in support of this recommendation.
- Expect units to provide a more explicit basis of the grounds for denial in terms of how the candidate has failed to meet the unit's criteria. Provide examples in the guidelines/instructions for completing the forms of more detailed statements to give to candidates. The goal is to provide more detailed and thorough rationales for negative recommendations based on unit criteria and assist candidates in the preparation of an appeal or to better understand the rationale and that there is no case for appeal.
- Explore the possibility of replacing the current 5 category rating system with "does not meet" "meets" or "exceeds" criteria. Would require changes to Art. VI.
  - Rationale: would provide clearer signal to candidate and to promotion and tenure committees eliminating confusion over whether "good" is good enough or not. Would make it more difficult for units to pass the buck by "damning with faint praise" (i.e., giving a rating of good with the hopes that the next level review will result in a negative recommendation.) The Task Force understands that FacEx raised this previously and that SPPT rejected it on the grounds that it was inadvisable to ask units to change P&T documents again especially since it was not entirely clear what problem a three-category rating scheme would solve. The Task Force notes that any rating scale has pros and cons and was not prepared to take a firm stand one way or the other.

- Provide an annual calendar of P&T events and deadlines at the department, school/college and UCPT levels.

### **Appendix A (Charge 3) Draft Language**

6.7.4.5 The Provost shall communicate the recommendations of the university level review to the candidate in writing. If UCPT or Provost makes a negative recommendation, the written notification shall state the reasons for the recommendation and notify the candidate of his or her right to respond or appeal pursuant to section 6.7.5. Notification of a negative recommendation shall be communicated to the candidate ~~by the first Friday in March~~ **no later than March 1 or the next business day** of the academic year in which the candidate is being considered for award of tenure and/or promotion in Rank.

6.7.5 Candidate Response. A candidate may file either a written response to be included in the record or an appeal pursuant to section 6.8 ~~within ten days of the first Friday in March~~ **no later than March 15 or the next business day** of the academic year in which the candidate is being considered for award of tenure and/or promotion in rank.

6.7.6 Promotion and Tenure Record. If the University Committee on Promotion and Tenure (UCPT) and Provost recommend the candidate favorably for promotion and/or tenure, the record of review, including the recommendations of UCPT and the Provost, shall be forwarded to the Chancellor for decision under section 6.9 of the Faculty Senate Rules and Regulations. If the candidate has received a negative recommendation from either UCPT or the Provost, UCPT shall retain the record of review until whichever of the following occurs first: (1) the candidate files either a timely response to a negative recommendation at the university level or an appeal; (2) the time for filing either a response to a negative recommendation at the university level or appeal has expired; or (3) ~~April 15~~ **April 22 or the next business day** of the year in which the candidate received a negative recommendation. If an appeal is filed, the recommendations and record of review will be forwarded to the Faculty Rights Board. If no appeal is filed, the recommendations and record of review, including the response, if any, shall be forwarded to the Chancellor for decision.

6.8.2 Initiation of Appeals. A faculty member who wishes to have the Faculty Rights Board (FRB) review a recommendation concerning promotion and /or tenure must file a written request with the Office of University Governance ~~within ten days of the first Friday in March~~ by **March 15 or the next business day** of the academic year in which the candidate is being considered for award of tenure and/or promotion in rank. The request for review must specifically identify the ground(s) for appeal under section 6.8.1 and briefly describe the circumstances supporting the ground(s). Upon receipt of an appeal, the Office of University Governance shall notify the Provost and request that the record

of review be forwarded for review by the FRB.

**6.8.4 Recommendations.** After consideration of the appeal, but not later than ~~April 15~~ **April 22 or the next business day** in the year in which the appeal is filed, the Faculty Rights Board (FRB) shall provide the Chancellor a written recommendation based on its conclusions and a copy shall be provided to the candidate and included in the record of review. If the FRB determines that one or more of the alleged grounds for appeal has been established by the faculty member, then the FRB shall provide a copy of the recommendation to the department, school, administrative unit, or committee determined to have committed a procedural error, violated academic freedom, or applied improper standards.

6.8.4.1 The written recommendation shall state whether the faculty member has established the alleged ground or grounds for appeal and provide a description of the circumstances supporting the FRB's recommendation. The recommendation shall specifically address any disputed factual issues.

6.8.4.2 If the FRB determines that one or more grounds for appeal has been established by the faculty member, it shall include in its recommendation a statement of whether and, if so, how the procedural error, violation of academic freedom, or application of improper standards adversely affected the consideration of the case. The FRB may recommend to the Chancellor that particular remedial accommodations or adjustments be made in the consideration of the record of review. Upon its completion of an appeal, the FRB shall forward its recommendation and the record of review to the Chancellor for decision pursuant to section 6.9.

6.8.4.3 If the FRB is unable to provide a written recommendation to the Chancellor by ~~April 15~~ **April 22 or the next business day** of the year in which the appeal was received, the appeal will be deemed completed without recommendation and the FRB will forward all materials of the appeal to the Chancellor to be included in the record of review. The candidate shall be informed and the FRB shall provide to the candidate and Chancellor a written statement explaining the reasons why the appeal was completed without recommendation. The Chancellor shall consider the entire record of review, including the materials of the appeal, and issue the final agency action.

## **Appendix B**

### **Additional Recommendations**

#### **Draft language**

**6.5.4 Recommendations.** Upon completion of the record, the committee conducting the initial review shall evaluate the candidate's record of teaching, scholarship, and service in light of the applicable standards and criteria and make recommendations concerning the award of tenure and/or promotion in rank.

6.5.4.1 If the department, school, or administrative unit procedures so provide, the committee recommendation shall be forwarded for consideration to a committee of the whole consisting of all faculty holding the appropriate academic rank.

6.5.4.2 The department chair, dean of the school, or head of the administrative unit shall indicate separately in writing whether he or she concurs in or disagrees with the recommendations of the committee and/or faculty.

6.5.4.3 The chair, dean, or head of the unit shall communicate the recommendations of the initial review to the candidate and provide the candidate with a copy of the corresponding evaluation section of the promotion and tenure form. *If a chair, dean or head of administrative unit does not concur with the unit's positive recommendation or concurs with a negative recommendation, a written rationale based on unit criteria will be included with the written recommendations provided to candidates.* Negative recommendations shall be communicated in writing and, if the review will not be forwarded automatically, shall inform the candidate that he or she may request that the record be forwarded for further review.

6.5.4.4 Favorable recommendations, together with the record of the initial review, shall be forwarded to the committee conducting the intermediate review, if one is to be conducted, or to the Provost for University Committee on Promotion and Tenure (UCPT) review, if not. Negative recommendations resulting from an initial review shall go forward for intermediate or UCPT review only if it is the candidate's mandatory review year or if the candidate requests it.

**6.6.3 Recommendations.** In conducting intermediate review, the college or school, or other administrative unit undertakes an independent review of a candidate's record and makes its own recommendations concerning the award of tenure or promotion in rank. The intermediate review neither affirms nor reverses the recommendations of the initial review, which remain part of the record that will be forwarded to the Chancellor for final decision.

6.6.3.1 The intermediate review committee shall evaluate the candidate's teaching (or professional performance), scholarship, and service in light of the applicable standards and criteria and make recommendations concerning the award of tenure and/or promotion in rank. If the intermediate review procedures so provide, the committee recommendation shall be forwarded for consideration to a committee of the whole consisting of all faculty holding the appropriate academic rank.

6.6.3.2 The dean of the college or school or head of the administrative unit shall indicate separately in writing whether he or she concurs in or disagrees with the recommendations of the intermediate review committee and/or faculty.

6.6.3.3 The dean of the college or school or head of the administrative unit shall communicate the recommendations of the committee and/or faculty to the candidate and provide the candidate with a copy of the corresponding evaluation section of the promotion and tenure form. *If a dean or head of administrative unit does not concur with the unit's positive recommendation or concurs with a negative recommendation, a written rationale based on unit criteria will be included with the written recommendations provided to candidates.* Negative recommendations shall be communicated in writing and, if the review will not be forwarded automatically, shall inform the candidate that he or she may request that the record be forwarded for further review.

6.6.3.4 Favorable recommendations, together with the record of initial and intermediate review, shall be forwarded to the Provost for consideration by the University Committee on Promotion and Tenure (UCPT). Negative recommendations resulting from an intermediate review shall go forward for UCPT review only if it is the candidate's mandatory review year or if the candidate requests it.