

2010-2012 Faculty Facilitator: Dianna McFarland, d.mcfarland@tcu.edu

Texas Christian University Faculty Appeal Policy

This Faculty Appeal Policy (FAP) applies exclusively to faculty for whom a promotional track exists, who in a non adversarial forum wish to appeal reappointment, promotion and/or tenure denial decisions. Appeal processes for the dismissal of a tenured faculty member are found in Section IV of the Tenure Policy in the *Handbook for Faculty and Staff*. All other types of appeals are to be addressed by the *Conflict Resolution Policy for Faculty* in the *Handbook for Faculty & Staff*. Disputes that may occur during the tenure probation period, for example, those that relate to the annual review, are also handled through the *Conflict Resolution Policy for Faculty*.

The main sections of this policy are: I. Purpose, II. Administrative Responsibility, III. Faculty Duties and Responsibilities, IV. Appeal Process, V. Summary of Review Steps Based on Appeal Origination, Figure 1: Overview Map of the Appeal Process, VI. Sequence and Timing for all Review Levels, VII. Definitions, VIII. FAP Facilitator Consultation & Informal Facilitated Discussion, and IX. Listing of Resource Exhibit Documents.

I. Purpose

This policy provides faculty with a reconsideration or appeal of reappointment, tenure and/or promotion denial decisions. This policy applies to termination of faculty, to tenure and/or promotion decisions that result in the termination of faculty, or to promotion denial decisions of tenured or ranked professors (e.g., assistant professors, professors of professional practice).

II. Administrative Responsibility

The Provost and the Faculty Appeal Policy (FAP) Facilitator are responsible for administering this policy. Appellants shall not suffer reprisal or prejudice from exercising their rights under this appeal policy. The FAP Facilitator shall ensure that the appeal process timeline is followed as stated or as altered by mutual consent of the parties.

III. Faculty Duties & Responsibilities

The initial decisions regarding the awarding of tenure and promotion are made by faculty in the home department of the candidate. Subsequently, these decisions either are affirmed or denied sequentially at the Department Chair, College Dean, and University levels before presentation to the Board of Trustees. If a faculty member formally questions either the process and/or the outcome of tenure and promotion decisions, then this faculty appeal process is intended to provide notice, an opportunity to be heard, and feedback regarding these decisions. The granting of tenure is a right vested exclusively with the Board of Trustees. Therefore, all decisions involving promotion and/or tenure appointments made under the Tenure and Promotion Policy shall constitute recommendations to appropriate administrative bodies. The burden of proof in the presentation of a tenure appeal at all stages rests with the Appellant (i.e., faculty member who is appealing; see section VI. Definitions).

IV. Appeal Process

TCU Faculty Appeal Policy: Effective Date April 1, 2010

An Appellant may initiate an appeal at any step of the tenure and/or promotion process; see http://www.provost.tcu.edu/Tenure_and_Promotion/tenurepromotion.html for a description of the normal tenure and/or promotion process and the appropriate employment policy for other promotional ranked faculty. The appeal begins at the level at which the denial decision has occurred (i.e., Department, School, College, or University) using the procedures described here.

The appeal must begin within 20 days (one month) of the faculty member's receipt of written formal notification of denial. The Appellant contacts the University FAP Facilitator who will meet with and advise the Appellant. The Appellant begins the formal appeal process of a tenure and/or promotion decision through a written request to the FAP Facilitator. See Figure 1 for a summary of the appeal process, section VII for the sequence and timing of specific events, and section VIII for specifics of the FAP Facilitator consultation.

The appeal/reconsideration will originate at the level at which the denial took place and the appeal shall move from lower levels to higher levels within the university. That is, the appeal case will move forward from the Department to the College Level and finally to the Faculty Appeal Hearing Committee (FAHC) and Provost. For example, a request for a reconsideration of a promotion/tenure denial that originates in the Department may not bypass the College Level Review. Substantive appeals, however, may only be considered in the academic unit or home (e.g., department) of the appellant. The Appellant may terminate the appeal process at any time.

If the denial is upheld (that is, the denial is not overturned) at all levels through the final appeal step which is the FAHC and Provost, the appeal process ends. If the denial is overturned at the Department Level or at the College Level, the appeal process ends and the case resumes under the normal tenure policy or the relevant policy on employment of ranked professors of professional practice, instructors, or the like. If the denial is overturned at the University Level by the FAHC, the recommendation is forwarded to the Provost; otherwise the appeal ends.

The appeal process may include Informal Facilitated Discussions. An Informal Facilitated Discussion can be requested by any appropriate party at any point in the appeal process to promote communication and clarification of relevant issues. Appellants are permitted to be accompanied by a colleague or professional support person/advisor during any scheduled meeting.

V. Summary of Review Steps Based on Appeal Origination

Departmental Level Review

If a promotion and/or tenure denial decision was made at the Departmental Level, the faculty member requests a departmental reconsideration in writing to the Department Chair. Next, the Department Chair and the Department Advisory Committee shall conduct a review of the Appellant's Appeal File composed of the faculty member's original promotion and/or tenure application packet and the written request. The Departmental Level Review includes requests for reconsideration for any reason given by the faculty member. Note: substantive appeals of tenure or promotion denials may only be made in the academic unit of the Appellant where subject matter expertise exists.

College Level Review

If a promotion and/or tenure denial decision was made at the College Level, or if the appeal proceeds to the College Level, the Appellant requests a reconsideration in writing to the Dean. The Dean, in consultation with the College Advisory Committee (if relevant), shall conduct the review of the Appellant's Appeal File. The Dean, upon review, may exercise the option of remanding the case back to the Department for review. If a remand occurs, the Department Chair and Advisory committee will

TCU Faculty Appeal Policy: Effective Date April 1, 2010

give the original decision an additional review and make a recommendation to the Dean and the College Advisory Committee. The College Level Review includes appeals for any reason given by the Appellant. If a substantive issue is raised, the College shall defer to the department or academic unit where the subject matter expertise exists to judge the fairness of the denial.

University Level Review

Appeals originate at the University level in one of three ways: a) the University Advisory Committee denies a tenure and/or promotion recommendation to the Provost, or b) the Provost declines to recommend tenure and/or promotion after the University Advisory Committee recommends tenure and/or promotion, or c) a College Level denial of tenure and/or promotion recommendation is forwarded at the written request of the faculty member to the Provost.

For the first case above, the faculty member may submit a written request for appeal to the FAHC. In the second case, where the original denial decision was made by the Provost, the Appellant may continue the appeal by written request of a review by the FAHC. In the third case, the Provost, upon review, may exercise the option of consulting the University Advisory Committee Dean prior to making a decision. Regardless, if the appeal is denied, the faculty member may request a final appeal to the FAHC. The FAHC decision is forwarded to the Provost and the Provost's decision is final.

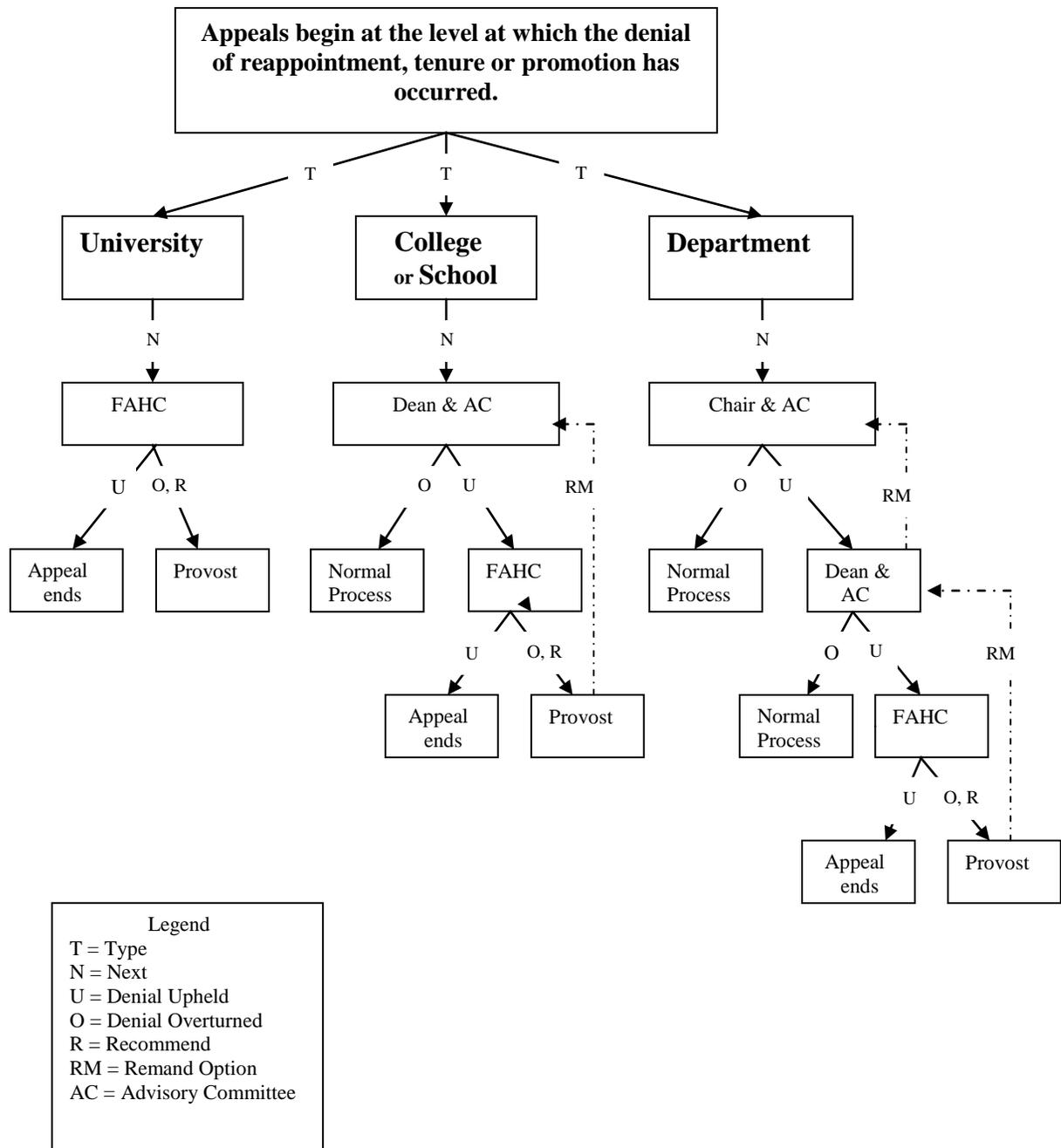
Faculty Appeal Hearing Committee (FAHC) Review

The last step of any faculty appeal is a review by and recommendation of the FAHC. The FAHC is used only once for any given faculty appeal and after lower level reviews are exhausted. Appeals arrive at the FAHC because of denial decisions originating at any one of three levels of the process: 1) a departmental level denial, 2) a college level denial, or 3) a University level denial. The FAHC is created on an *ad hoc* basis for each appeal case and will disband upon the completion of the case. The members will hear the case, review the Appeal File, and when or if necessary, request an Informal Facilitated Discussion and/or consult with the relevant parties to the case. Regardless of how an appeal originates, when the appeal appears before the FAHC, the FAHC may consult with the Departmental and/or College Advisory Committee members, as well as the Department Chair and/or College Dean, before rendering a recommendation. Where substantive issues are raised in the appeal, the FAHC, Provost, Dean, and College Advisory Committee shall always defer to the judgments of the qualified faculty members of the Appellant's academic unit or home.

The FAHC final report will be written and sent to the Appellant, FAP Facilitator, and Provost within 10 days of receiving the Appeal File from the FAP Facilitator. A faculty appeal ends once the FAHC either recommends to the Provost that the denial be overturned or decides that the denial shall not be overturned but rather upheld. FAHC recommendations require an affirmative vote of a simple majority of the members. The sequence and timing of each of these steps in the process are further described in section VII.

Figure 1

OVERVIEW OF THE APPEAL PROCESS



VII. Sequence and Timing for all Review Levels

Once the Appellant requests a reconsideration of a denial decision in written form, the FAP Facilitator will guide the sequence of events according to the below steps. After step 1, the timing of subsequent events may be reasonably adjusted due to special circumstances for either party, based on mutual consent.

1. The Appellant contacts the University FAP Facilitator who will meet informally with and advise the Appellant. The FAP Facilitator will schedule an appointment with the Appellant within 2 days and will meet with the Appellant within 10 days of the Appellant's initial contact. The Appellant begins the formal appeal process within 20 days (one calendar month; see section VI Definitions) of receipt of the written notice of a promotion or tenure denial by written request to the FAP Facilitator (email is sufficient). This written notice begins the procedure clock.
2. Within 5 days of the written request of appeal to the Facilitator, the Appellant forwards to the Facilitator a copy of the promotion or tenure application packet and a letter of request for a reconsideration (i.e., the Appeal File; see section VI Definitions) written to the appropriate administrator and committee members.
3. Within 1 day of formal written notification by the Appellant, the FAC Facilitator notifies the appropriate (level of the original denial decision) administrator and corresponding advisory committee members and within 1 day of receiving materials for the Appeal File from the Appellant, forwards this file to them.

In the case of a Review by the Faculty Appeal Hearing Committee (FAHC), the appropriate administrators are the College Dean and the Chair of the Faculty Senate. The selection process for the FAHC shall occur within 10 days and the steps as shown below will apply.

4. The administrator, advisory committee members, or FAHC members may request an Informal Facilitated Discussion for communication and clarification at any time. This request is made of the FAP Facilitator. The Review process is temporarily stopped and the sequence and timing steps of the Informal Facilitated Discussion (see section VIII.) are followed.
5. The administrator or appropriate committee members have 10 days from the receipt of the Appeal File to review the Appellant's case and issue a written response to the Appellant and FAP Facilitator. This document becomes part of the Appeal File. In the case of a Review by the FAHC, their written response is the final decision and the response and decisions are forwarded to the Appellant, FAP Facilitator and Provost (along with recommendations); the appeal ends at this step. In the case of a Review by the Department, College, or University, the following steps of this process will apply.
6. Within 3 days of the receipt of the Department Chair's, Dean's or Provost's written response, the Appellant will notify the FAP Facilitator of the decision either to: a) end the appeal process; b) request an Informal Facilitated Discussion or c) continue the appeal through the next step.
7. Within 1 day of the Appellant's notification, the FAP Facilitator will report the decision to the Department Chair.

TCU Faculty Appeal Policy: Effective Date April 1, 2010

8. If the Appellant has chosen to continue the appeal, s/he must generate a written response to the Review which had been completed. This response is to be provided to the FAP Facilitator within 2 days of the Appellant's notification to continue the appeal. This document becomes part of the Appeal File.
9. Within 1 day of receipt of the Appellant's written response, the FAP Facilitator shall send in writing a request of the appropriate Level for either an Informal Facilitated Discussion or a Review.
10. Appellants who request a Review at the Department Level may not bypass College Level Review. Before a faculty member who originates a Review at the Department Level requests an appeal to the FAHC, the written request for reconsideration by the Department must be filed with the Provost. An appeal case stops with the decision and/or recommendation that is forwarded to the Provost by the FAHC, by earlier resolution at the Department or College Level, or by the decision of the Appellant.

VI. FAP Definitions

Appeal/Reconsideration: A reconsideration of a promotion and/or appeal denial always occurs at the department level. Because the faculty member is requesting a second look, the Faculty Appeal Policy provides for the original decision making body to take a second look or reconsideration of the original tenure/promotion denial decision. Reconsideration or substantive appeals of tenure and/or promotion denials must always be made in the academic unit (usually at the department level) of the appellant where subject matter expertise exists. An appeal/reconsideration is a **written request** for a review by the faculty member regarding the failure to recommend the faculty member for tenure and/or promotion or the denial of tenure and/or promotion. Appeals, rather than reconsideration requests, are made to the next level decision making bodies (e.g., the Dean or College Advisory Committee). If a faculty member is denied tenure and/or promotion by their respective department, they may request in writing a reconsideration of that decision. If the faculty member wishes to appeal the decision after a reconsideration of the decision, then the appeal may proceed to the Dean, the College Advisory Committee, or the Faculty Appeal Hearing Committee.

Appeal File: A file containing the Appellant's original tenure and promotion application packet and all relevant documents needed for a formal review of the promotion or tenure denial decision. The file consists of a brief written statement by the Appellant, written recommendations of the Department Chair, Dean, and/or Advisory Committees, and any other documents produced during the appeal process.

Appellant: An Appellant is any promotional track faculty (e.g., professor of professional practice or clinical professor) or tenure-track or tenured faculty who seeks to appeal a tenure and/or promotion denial decision using the procedures available under this FAP process.

Advisor/Attorney/colleague or professional support person: At any time that a faculty member meets for an appeal or reconsideration of the tenure and/or promotion denial with any University official, the faculty member may consult with a colleague or professional support person/advisor. If either party selects an attorney as the advisor, the party shall provide the other party with at least a one week's notice before any meeting which the parties will jointly attend. The faculty appellant's advisor may attend these meetings. The advisor does not participate directly or make any type of representation.

TCU Faculty Appeal Policy: Effective Date April 1, 2010

Day: A day refers to normal business days during the academic year (i.e., fall and spring academic semesters). The parties and/or FAP Facilitator may, after mutual agreement, extend the time limits of the process.

Faculty Appeal Hearing Committee (FAHC): The Faculty Appeal Hearing Committee shall consist of five employees of Texas Christian University, one selected by the Appellant in question, one selected by the Dean of the Appellant's college and three selected from a list of 10 in accord with the following plan. The Faculty Senate Executive Committee will identify the names of 10 faculty as potential members. The Faculty Senate Chair shall then present this list of 10 names to the two parties for ranking according to their preferences for membership on the Hearing Committee. The chairperson of the Senate, or designated representative, shall then select the three names most preferred by both parties, breaking any tied rankings by a method s/he deems appropriate. These three persons shall then designate one among themselves to serve as Chair of the five-person Faculty Appeal Hearing Committee. The committee is named on an ad hoc basis for each appeal case and will disband upon the completion of the case. The members will hear the case, review the Appeal File, and when or if necessary, request an Informal Facilitated Discussion and/or consult with the relevant parties to the case. FAHC recommendations require an affirmative vote of a simple majority of its members. A final report will be written and sent to the Appellant, FAP Facilitator, and Provost within 10 days of receiving the Appeal File from the FAP Facilitator. Faculty Appeal Hearing Committee decisions are final and end the appeal process.

Faculty Mediator: A faculty mediator serves as a neutral third party who listens to both sides of a dispute. A mediator does not make decisions for the parties. Rather, a mediator facilitates dialogue among the parties and assists them in reaching resolution to their dispute. The FAP Facilitator will typically appoint two faculty mediators from the Mediators Committee when mediation is requested. All appointed faculty mediators (either TCU-employed or non TCU-employed mediators) will have received 40 hours of training in compliance with Title 7, Chapter 154, Texas Civil Practice and Remedies Code (see Exhibit A), and consistent with the Texas Mediation Trainer Roundtable Annotated Standards (see Exhibit B). The mediators must abide by the Standards of Practice established by the Texas Association of Mediators (see Exhibit C) and the Ethical Guidelines for Mediators established by the State Bar of Texas Alternative Dispute Resolution Section (see Exhibit D).

Informal Facilitated Discussion: An Informal Facilitated Discussion is designed to promote open dialogue between parties as they inquire, clarify, or explore relevant issues and concerns. These mediated sessions are voluntary and based on agreement by each party that confidentiality of the information shared in the discussion will be maintained. The discussions are informal in that the format is conversational. The discussion is facilitated by two Faculty Mediators who are professionally trained to guide others' dialogue impartially (see Faculty Mediator above). The sessions are discussions, thus more than one meeting may be needed as questions are raised and solutions sought. This process allows Appellants, Department Chairs, Deans, and the Provost to meet informally and talk about the elements of the case and is an opportunity for all parties to seek win-win outcomes in their dispute. Informal facilitated discussions are an aid to the process and are not intended to substitute for the decision making process described in the Tenure Policy of the Faculty and Staff Handbook.

Faculty Appeal Policy (FAP) Facilitator: The FAP Facilitator is a current TCU tenured faculty member who represents and assists the parties engaged in the Faculty Appeal Policy (FAP). The FAP Facilitator will not make decisions for the parties. The FAP Facilitator is neither a representative of the Appellant, the faculty, or the administration. The FAP Facilitator, similar to the mediators, will receive 40 hours of training in compliance with Title 7, Chapter 154, Texas Civil Practice and Remedies Code.

TCU Faculty Appeal Policy: Effective Date April 1, 2010

FAP Facilitators may also receive additional training related to dispute resolution. The Provost, in consultation with the Faculty Senate Executive Committee, will appoint: a) an FAP Facilitator for a term of five years, and b) an FAP Facilitator Alternate, for a five year period, who serves as both an apprentice to the FAP Facilitator, and where necessary (e.g., a conflict of interest situation) as a substitute for the FAP Facilitator. Normally, the FAP Facilitator Alternate will succeed the FAP Facilitator upon completion of the five year appointment. The FAP Facilitator and FAP Facilitator Alternate will report to the Faculty Senate Chair and administer the policy with the Provost. The FAP Facilitators will serve terms with a two year overlap.

Parties: Under the policy, parties to the appeal may include any of the following: the Appellant, Department Chair, Dean, Provost, Department, College, Faculty Appeal Hearing Committee, or Department, College, or University Advisory Committees.

Remands: Under the FAP: a) the Dean may remand a promotion and tenure decision back to the Department Chair and Advisory Committee or b) the Provost may do the same by remand a decision to the Dean and the College Advisory Committee. The intent of a one-time-only use of a remand is to give the decision a second look. If upon remand, a decision is changed, then normal procedures will be followed. If no change in the decision is made, then the decision will ultimately be resolved by a FAHC or Provost decision as per the FAP process.

Time limits: A day refers to normal business days during the academic year (i.e., fall and spring academic semesters). The parties and/or FAP Facilitator may, after mutual agreement, extend the time limits of the process.

VIII. FAP Facilitator Consultation & Informal Facilitated Discussion

The FAP Facilitator is a third-party facilitator who is available to assist the Appellant in determining the basis and procedures for the appeal; the Facilitator consults with all parties to answer questions or to provide clarification. The FAP Facilitator will continue to serve and will consult with all the parties throughout the appeal process and is responsible for ensuring the timelines of the policy or to obtain mutual consent from all parties to alter the timelines.

The Appellant begins the appeal of a tenure and/or promotion denial by contacting the FAP Facilitator to discuss his or her case. The FAP Facilitator will schedule an appointment with the Appellant within 2 days and will meet with the Appellant within 10 days of the Appellant's initial contact. The FAP Facilitator will meet with and advise the Appellant. The Appellant then will formally initiate the appeal of a denial of tenure and/or promotion by notifying the FAP Facilitator in writing (email notification satisfies this requirement). The procedure clock starts at this written notification and is to be started within 20 days of the written notification of the denial of promotion or tenure.

Within 5 days after the formal notification of the appeal, the Appellant will provide the FAP Facilitator with a set of materials and documents in support of the appeal case. These materials will constitute the Appeal File. Only written responses at each appeal step may be added to this Appeal File. If the Appellant is on a tenure track, the supporting materials will include a copy of the Tenure and Promotion Application Packet along with a written statement and supporting recommendations or other relevant documents. If the Appellant is on a promotional ranked track (e.g., professors of clinical practice) the supporting materials will include copies of relevant materials or documents along with a written statement and supporting recommendations for the appeal case. The supporting materials and documents become the original documents of the Appeal File. Also see above, section VII Sequence and Timing for all Review Levels.

Informal Facilitated Discussion An Informal Facilitated Discussion is a mediation that occurs during the appeal process between the Appellant and appropriate level administrators (e.g., if the appeal is at the Department Level, the appropriate level administrator is the Department Chair and/or the Department Advisory Committee). This meeting will include two trained mediators to facilitate conversation. The purpose of the Informal Facilitated Discussion is to promote open, confidential dialogue and to further explore and discuss reasons for the decision to deny tenure and/or promotion. The Informal Facilitated Discussion is a voluntary process and all parties involved in the discussion must agree to confidentiality concerning the content of these discussions. If the appeal case moves forward, additional Informal Facilitated Discussions may be requested by the Appellant, administrators, or advisory committee members.

The FAP Facilitator will guide and be responsible for the sequence of events of the Informal Facilitated Discussion according to the following:

1. If the Appellant or an appropriate-level administrator requests an Informal Facilitated Discussion, the FAP Facilitator will contact the appropriate parties, determine their agreement to the session and then notify all parties that the discussion will occur. If one party does not agree to this discussion, it will not occur. The FAP Facilitator will work with TCU Human Relations Department personnel to assign 2 faculty mediators from a list of trained mediators.
2. The informal discussion will take place within 10 days and may be extended by mutual consent of parties involved in the session.
3. Within 3 days of the conclusion of the Informal Facilitated Discussion, the mediators will notify the FAP Facilitator of the session outcome. Within that same 3 days, parties other than the Appellant who are involved in the Discussion and in subsequent decisions from the Discussion will notify the FAP Facilitator in writing (email satisfies this requirement) concerning any decisions. For example, if the Informal Facilitated Discussion has occurred during a Review at the Departmental Level, the Department Chair or Department Advisory Committee Members will have 3 days after that discussion to issue a written response. The Facilitator subsequently will report all outcomes to all parties within 1 day.
4. Within an additional 3 days, the Appellant will notify the FAP Facilitator of his or her decision regarding the continuance of the appeal. That is, if the denial is overturned, the appeal case is ended; if the denial is upheld and the Appellant chooses not to continue the appeal, the appeal case is ended. Or, if the denial is upheld and the Appellant so chooses, the appeal will continue to the next level and will end with decisions made by the Faculty Appeal Hearing Committee.
5. The FAP Facilitator will report the Appellant's decision to all concerned parties within 1 day of notification by the Appellant; if the appeal will continue, this includes parties at the next level. If the Appellant has chosen to continue the appeal, s/he must generate a written response to the Review which had been completed for consideration at the next level. This response is to be provided to the FAP Facilitator within 2 days of the Appellant's notification to continue the appeal. This document becomes part of the Appeal File.

TCU Faculty Appeal Policy: Effective Date April 1, 2010

6. Within 2 days after the receipt of the Appellant's written response, the FAP Facilitator shall assemble and/or forward the Appeal File for review to the appropriate Level.

IX. Listing of Resource Exhibit Documents

These documents are available upon request of the FAP Facilitator.

Exhibit A: Title 7, Chapter 154, Texas Civil Practices and Remedies Code

Exhibit B: Texas Mediation Trainers Roundtable 40 Hour Basic Mediation Training Standards

Exhibit C: Standards of Practice established by Texas Association of Mediators

Exhibit D: Ethical Guidelines for Mediators, State Bar of Texas Alternative Dispute Resolution Section