

The COVID Faculty Assignment Appeals Committee (June 22, 2020)

I. Authorization and Purpose

The COVID Faculty Assignment Appeals Committee (the “Committee”) is constituted by the University Faculty Council (“UFC”) pursuant to the authority of the President and Provost and as provided in the “COVID-19 LEAVE POLICY FOR FACULTY” (the “Policy”).¹ The Committee’s purpose is to hear appeals by faculty in the rare cases in which the faculty member and school administration cannot arrive at a mutual resolution of the terms on which the faculty member will carry out faculty duties of teaching, research, and service, or on the form and terms of a leave. This includes cases in which the faculty member may not qualify as a member of a CDC-designated vulnerable population. The Committee will review the substance of the appeal and of the resolution that is offered by the school administration. The Committee’s determination will be considered to be a recommendation to the Provost, whose decision in the matter will be final.

II. Committee Membership

The Committee will consist of the current voting members of the UFC who hold tenure. They will continue to serve on the Committee whether or not they continue to be members of the UFC.² The Committee shall elect a Chair, Vice Chair, and Secretary. The names of the Committee’s officers, together with their email addresses, will be posted on the Provost’s website. The Chair may designate another member (typically but not necessarily the Vice Chair or Secretary) to take any action that the Chair could take under the procedures set out in this document. Any member who cannot continue to serve may designate a tenured faculty member from the same school to serve on the Committee; however, the faculty of that school may, if it wishes, choose a different replacement member.

On or before July 7, 2020, any school’s faculty may elect other tenured faculty members to serve on the Committee in place of the initial members from that school.³ The Committee will cease to exist as of June 1, 2021, unless the Committee determines prior to May 15, 2021, that there is a need for it to continue its work. If there is a need for the Committee to continue its work past June 1, 2021, the faculty of each school shall determine which of its tenured faculty members will serve on the Committee from that date forward (with the number of tenured faculty members from each school equal to the number of its representatives on the UFC).

The Committee may make minor changes to the procedures described in this Charter. Eight members of the Committee shall constitute a quorum for that or other purposes, including issuing of general reports to the University faculty, as noted below; provided, however, that at least two members from Seaver College must be present for there to be a quorum.

¹ The policy is posted on the Provost’s webpage at

<https://www.pepperdine.edu/about/administration/provost/content/policies/covid-19-leave-faculty.pdf>.

² The current members of the UFC are familiar with the Policy, having provided feedback and recommendations on the original draft and first revised draft of the policy prior to its being finalized. It is also important that the Committee maintain continuity from this summer through at least the fall, and potentially through the full 2020-21 academic year. If any current member of the UFC is not a tenured faculty member, the faculty of that current member’s school may elect a tenured faculty member to serve on the Committee in their place.]

³ The Committee likely will begin handling appeals by that date. A change in the Committee membership after that date would be disruptive.

III. Initiating an Appeal

A faculty member⁴ may initiate an appeal promptly after receiving the School's Final Decision.⁵ Ordinarily, the appeal should be initiated no later than midnight on the second business day following receipt of the School's Final Decision.

The faculty member initiates an appeal by emailing a Faculty Appeal⁶ to the Committee's Chair, to the Committee's Vice Chair, to the Dean of the faculty member's school, and to any one additional person (such as a divisional dean) who may have been designated by the Dean (in a clear communication to the faculty) to receive appeals. As with other procedures provided for in this document, the Committee has discretion to excuse errors that do not substantially delay the handling of the appeal.

The Faculty Appeal must include (1) the School's Final Decision, (2) a short explanation of why the faculty member believes that the School's Final Decision does not appropriately deal with the faculty member's particular circumstances; (3) a short description of the efforts made by the faculty member and the school administration to reach agreement; and (4) a statement of the outcome sought by the faculty member. The appeal should include any documents or records showing relevant communications between the faculty member and the school administration, along with other supporting information and documents. If possible, the appeal should include statements from any persons who have information that the faculty member thinks is important (but such statements may be submitted later).⁷ The statement of the outcome sought by the faculty member may include different alternatives that the faculty member thinks are appropriate or at least preferable to what the school administration has offered in the School's Final Decision.

⁴ Unless the context indicates otherwise, the term "faculty member" as used in this document means a full-time faculty member who has initiated an appeal or who is considering whether to do so, and the term "member" means a member of the Committee, or a member of a list of six Committee members, or a member of an Appeal Panel. The term "school representative" means the person designated by the administration of a school to represent it at a hearing.

⁵ The term "School's Final Decision" means the final decision made by a dean or dean's designee with respect to the matters noted in Article I of this Charter, after failure of the administration and faculty member to reach an agreed resolution. Ordinarily, it would be in written form. If the school administration has provided its final decision orally, then the faculty member should describe it in the Faculty Appeal. The School's Final Decision may include alternatives that are offered to the faculty member for the faculty member to choose from, such as the choice of teaching face-to-face or of taking an unpaid leave, none of are acceptable to the faculty member.

⁶ A simple but optional form for a Faculty Appeal will be posted on the Provost's website within a day or two of the posting of this Charter. The Faculty Appeal does not need to be a formal document.

⁷ Such information might include, for example, whether there is substantial work that the faculty member could do in place of face-to-face teaching, or whether a course may be taught effectively via Zoom. The faculty member and school representative may disagree on such matters, and it may be useful to the Panel to have the benefit of others' views. It may be difficult to have live testimony of witnesses (other than the faculty member and the school representative) in this expedited appeal process. (There also may be scheduling problems if witnesses are to testify live.) The Panel Chair has discretion whether or not to permit live testimony by any particular witness. Faculty members and school administrators are advised that they should obtain written statements from potential witnesses for use during the hearing in place of live testimony, unless, before the hearing, they obtain permission from the Panel Chair to present live testimony.

IV. Selection of the Appeal Panel

As soon as possible, the Chair shall email to the faculty member a list of six committee members who may be chosen by the faculty member to serve on the three-person Appeal Panel. If possible, the list will include at least one committee member from the faculty member's school. The faculty member will have 24 hours to respond by email with a choice of three of them to serve on the Appeal Panel. If the faculty member does not respond during that period (and any additional period of time that the Chair may allow), the Panel will be chosen randomly from the list. In either event, the Chair will promptly notify the faculty member and the school administration of the makeup of the Panel. As soon thereafter as possible, the Panel will choose one of its members to serve as Panel Chair and so notify the faculty member and the school administration.

V. Scheduling the Hearing

After promptly consulting or attempting to consult with the faculty member and school administration, the Panel Chair will select a date and time for the hearing, such that the appeal may be handled expeditiously. The Panel Chair will provide the faculty member and school administration at least 48 hours' notice by email of the time and date (and of the manner by which the hearing will be held: remotely, in person, or a combination of the two). The hearing shall not be scheduled for a time that would conflict with any religious obligation that the faculty member may have, except with the faculty member's consent.

VI. Optional Written Response by the School Administration; Mutual Exchange of Witness Statements

If the school administration wishes to provide a written response to the appeal, the school administration may do so by emailing the response to the faculty member, to the Committee's Chair and Vice Chair, and to the Panel Chair, no later than noon of the day prior to the hearing.

No later than that same time, the faculty member and school administration must provide to each other and to the Committee any written "witness statements" that they may wish to use at the hearing and that are reasonably available at that time, along with the names of any witnesses they would seek permission to have testify live at the hearing.

VI. The Hearing

The hearing will be held privately, with the faculty member, the school representative, and the three members of the Panel being present in person or remotely. The hearing will be informal and will not be governed by the formal rules that might ordinarily govern a court hearing. The school representative must be familiar with the particular reasons that justify the School's Final Decision. (The faculty member and the school representative each may be accompanied by one adviser, but it is anticipated that the advisers will not address the panel.) The faculty member and the school representative will each having an opportunity to explain their positions, to present witness statements and documents, and, to the extent deemed appropriate by the Panel Chair, to ask questions of each other. The hearing will not be recorded. Live witness testimony will be permitted only with the Panel Chair's permission.

Panel members may ask questions and suggest ways in which the school administration and faculty member might resolve their disagreement. To that end, it would be helpful if the representative of the school administration would come to the hearing with authority to agree to reasonable modifications of the School's Final Decision at least tentatively. At the end of the hearing, the Panel Chair will ask whether the faculty member and the school administration might want to have a further opportunity to resolve the matter by agreement, with the Panel delaying its decision for that purpose.

After the hearing, the Panel may request the faculty member or school administration to provide additional information that may be helpful to the Panel's consideration of the appeal.

VII. The Panel's Decision

After the hearing, the members of the Panel will discuss the matter. They will be guided by the Policy and by any other commitments made by the school administration or by the University, all in light of the University's Christian principles. They also may consider the "Scenarios" set out at the end of the Policy as indications of how the Policy should be applied. They may consult with other members of the Committee, including for purposes of trying to maintain consistency in recommendations.

As soon as possible after the hearing, and no later than 48 hours after the end of the hearing, the Panel will issue a written decision in the form of a recommendation to the Provost, together with an explanation of the reasons for the Panel's recommendation. The Panel may recommend that the School's Final Decision be upheld in its entirety, or that it be modified as requested by the faculty member, or that it be modified in some other way.

Copies of the recommendation will be provided to the Provost, the faculty member, the school representative, and the other members of the Committee. Neither the Panel members nor the other members of the Committee will disclose information about the matter in a way that would allow identification of the faculty member. The Committee may from time to time make reports to the faculty about its work, including the degree to which its recommendations are adopted by the Provost.

VIII. The Provost's Final Decision

The Provost shall consider the Panel's recommendation. Prior to making a final decision, the Provost may discuss the Panel's recommendation with the members of the Panel, other members of the Committee, the faculty member, representatives of the school's administration, or any other person. The Provost shall submit a decision in writing to the faculty member, the school representative, the school's dean, the members of the Panel, and the other members of the Committee. The Provost's decision shall be final.