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## **Rank and Status Independent Examination Procedures**

A faculty member may request an independent examination of the academic vice president's recommendation to deny continuing faculty status (CFS) candidacy, CFS, or rank advancement.

### **1. Filing a Request for an Independent Examination**

A request for an independent examination may be based on either or both of two grounds:

1. that, given the information available in the file at the time of the file review, the academic vice president's recommendation was unreasonable, or
2. that a substantial procedural error occurred in the rank and status process (see section 11).

The faculty member must submit a request for an independent examination to the academic vice president within ten calendar days after receiving the letter stating the academic vice president's decision to recommend denial of CFS candidacy, CFS, or rank advancement.

### **2. Examining Panel**

The president will appoint an examining panel composed of two members of the Academic Vice President's Council (but not the associate academic vice president – faculty development) and three faculty members who have CFS. The president will designate one of the members of the Academic Vice President's Council to chair the panel. The faculty members of the examining panel will be drawn from a pool of faculty nominated by their college deans as potential panel members. The faculty pool will be refreshed as needed and as members accept other assignments or leave the university. Any member of the pool may serve on one or more examining panels during an academic year.

### **3. Faculty Advocate and University Representative**

The faculty member may select an advocate from among all BYU faculty who have CFS to assist in the preparation and presentation of the materials to be presented to the examining panel.

The academic vice president will appoint a faculty member who has CFS or an administrator to serve as university representative to prepare and present the university's response to the case documented in the independent examination.

### **4. Copying and Redacting the File**

The associate academic vice president – faculty development will give the faculty member a copy of the file. The names and other information identifying any external and internal



reviewers (not including department and college review committees, chairs, and deans) will be removed from the confidential review letters of citizenship, teaching, scholarship, and professional service and from any other portions of the file, as provided in the faculty member's waiver statement. The university representative and the panel chair will be given unredacted copies of the file.

## **5. Confidentiality**

The information provided to the faculty member and the university representative will be held strictly confidential and will not be disclosed except as follows:

- A. The faculty member, the faculty member's advocate, and the university representative may share information with the department chair, college dean, and members of the department or college review committees or the university rank and status council, and other university employees as reasonably necessary in preparing a case for the independent examination and to understand the reasons for these reviewers' recommendations.
- B. If the faculty member or the university representative determines that information must be disclosed to any additional persons, including witnesses, to adequately present the case or the response, the faculty member or the university representative will request permission from the chair of the examining panel. The number of witnesses should be kept to a minimum. Witnesses will submit their testimony only in writing.

Violations of confidentiality may be considered in the independent examination and may be dealt with as the panel deems appropriate, including by exclusion of witness statements or evidence, or in extreme cases, by dismissal of the request for independent examination.

## **6. The Faculty Member's Statement**

Within 30 calendar days after receiving the file, the faculty member will provide a written statement to the associate academic vice president – faculty development, who will distribute it to the chair of the panel and the university representative. The statement will:

- A. Outline all claims on which the request for the independent examination is based.
- B. Outline all arguments and information that the faculty member wishes to be considered.
- C. Include copies of all documents (except those already in the file) that are referenced in the statement, including any witness statements.



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## 7. Response Statement

Within 30 calendar days after receiving the faculty member's statement, the university representative will provide a written response to the associate academic vice president – faculty development, who will distribute it to the chair of the examining panel and the faculty member. The statement will:

- A. Outline all responses to the claims on which the case for requesting the independent examination is based.
- B. Outline all arguments and information upon which the recommendation of the academic vice president was based.
- C. Include copies of all documents that are referenced in the response to the faculty member's statement, including any witness statements.

## 8. Provision of Materials to Panelists

At least five business days prior to the examination meeting, the chair of the panel will provide the complete, unredacted rank and status file and the written statements prepared by the faculty member and by the university representative to each member of the panel.

## 9. Examination Meeting

Only members of the examining panel, the faculty member, the faculty member's advocate, and the university representative may attend the examination meeting. The faculty member and the university representative will be invited to answer questions from the panel and to clarify the case they each prepared. The faculty member will decide whether he or she, or the advocate, will take the lead in answering questions and clarifying for the panel. The amount of time allotted to the questions and clarifications will be limited, balanced for each side, and determined by the chair of the panel. At the conclusion of the questions and clarifications, the faculty member, the faculty member's advocate, and the university representative will be dismissed before panel deliberations begin. Exceptions to this process may be granted at the sole discretion of the chair of the examining panel.

## 10. Additional Information

At the discretion of the chair, the examining panel may request, receive, or obtain additional information from any source, including information not considered by other reviewers.

## 11. Presumptions

In considering the substantive merits of the case, the examining panel will presume that the academic vice president's recommendation is reasonable and justifiable. Therefore, the faculty member has the burden of persuasion to demonstrate that the academic vice president's



recommendation is unreasonable in light of all the information that was available in the file at the time of the file review or that a substantial procedural error occurred.

To show a substantial procedural error, the faculty member has the burden of persuasion to demonstrate:

1. that a procedure required by the university's [Rank and Status Policy](#) or the applicable Rank and Status ([Professorial](#) or [Professional](#)) Faculty Review Procedures was not carried out according to policy;

and

2. that the error affected the outcome of the review such that upon full consideration of the case, including any information that was excluded or misconstrued because of a procedural error, the granting of CFS candidacy, CFS, or rank advancement would likely be warranted.

## **12. Examining Panel's Recommendation**

After considering the faculty member's case and the university's response, the examining panel will recommend by majority vote that the academic vice president's recommendation be sustained or reversed. The panel may make other recommendations regarding the case. Within ten calendar days of the meeting, the chair of the panel will give the panel's recommendation and its reasons in writing to the president. Copies will be sent to the faculty member, the faculty member's advocate, the academic vice president, the associate academic vice president – faculty development, the university representative, the dean, and the department chair.

## **13. President's Decision**

After receiving the examining panel's recommendation, the president will decide whether to grant or deny CFS candidacy, CFS, or rank advancement, to delay the review, or take any other action to resolve the matter. The president has the exclusive authority, in the exercise of the president's sole discretion, to make the decision. All determinations in the rank and status process other than the president's decision are only recommendations. The president will give the faculty member written notice of the decision. Copies of the letter will be sent to the academic vice president, the associate academic vice president – faculty development, the dean, and the department chair. If the president grants the faculty member's application for CFS candidacy, CFS, or rank advancement, the CFS candidacy, CFS, or rank advancement will be effective immediately.



#### **14. University Employment During the Independent Examination Process**

During the time that an independent review of the recommendation to deny CFS candidacy or CFS is pending, the faculty member remains on his or her current contract. If the independent review process extends beyond the term of the faculty member's current contract as a result of the independent review, a stay pending an investigation, or other circumstances resulting in unavoidable delay, the university may issue semester by semester temporary contracts until a final employment determination is made by the president.

If the president grants the faculty member's application for CFS candidacy or CFS after a temporary contract has been issued, the faculty member's temporary position will immediately be changed to a CFS-track or CFS position. If the president's decision is not to grant CFS candidacy or CFS, the faculty member's employment at BYU will terminate at the conclusion of the current contract unless the university, at its sole discretion, grants the individual up to a one-year temporary position while the person seeks employment elsewhere.

#### **15. Exhaustion of Remedies and Waiver of Claims**

Failure to pursue an independent examination within the stated deadlines and to exhaust the remedies provided by these procedures constitutes a waiver of the faculty member's right to pursue any legal claim arising out of the university's actions in the matter unless that right is otherwise preserved by law.

**APPROVED:** 14 Feb 2022

**PRIOR VERSION:** 14 Jan 2008

**APPLICABILITY:** These procedures apply to CFS-track faculty.

**POLICY OWNER:** Academic Vice President

**RESPONSIBLE OFFICE:** Associate Academic Vice President – Faculty Development

**RELATED POLICIES:**

- [Faculty Performance Annual Reviews Policy](#)
- [Rank and Status Policy](#)
- [Rank and Status Professional Faculty Review Procedures](#)
- [Rank and Status Professorial Faculty Review Procedures](#)