

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS:

SUPERIOR COURT

**BENJAMIN EDELMAN,**

**Plaintiff,**

**v.**

**PRESIDENT & FELLOWS OF  
HARVARD COLLEGE,**

**Defendant.**

**CIVIL ACTION NO. 2384CV00395-F**

**HARVARD’S MEMORANDUM IN SUPPORT OF  
ITS MOTION TO DISMISS PLAINTIFF’S COMPLAINT**

**I. INTRODUCTION**

In 2015, Harvard Business School (“HBS”) concluded that Plaintiff, then seeking appointment as a tenured professor at HBS, failed to meet a critical requirement of HBS’s tenure standard: upholding HBS’s Community Values. The Faculty Review Board (“FRB”) HBS convened in connection with Plaintiff’s tenure review, and charged with assessing whether Plaintiff met this standard, reached that conclusion based on a series of concerns: the adequacy of Plaintiff’s disclosures about funding for his published research; the public firestorm Plaintiff set off when he threatened legal action against a Brookline Chinese restaurant owner; and issues related to Plaintiff’s interactions with HBS staff.

Because Plaintiff failed to meet HBS’s criteria for tenure, HBS could have simply rejected his tenure application and ended his affiliation with HBS. Instead, HBS’s leaders gave Plaintiff a second chance—a two-year extension as a non-tenured professor, with the prospect of re-applying for tenure in 2017. Two years later, when Plaintiff applied again, continued concerns about

Plaintiff's disclosures and interactions were raised; HBS's Dean chose not to recommend his promotion to tenure to Harvard's President, and Plaintiff's employment at HBS ended. Now, nearly six years after his departure from HBS, Plaintiff asks the Court to *order* HBS to give him a *third* chance by requiring yet another tenure review. Plaintiff claims that HBS' review of his 2017 tenure application violated his rights and, in particular, that the FRB convened that year failed to follow its procedures.

Pursuant to Mass. R. Civ. P. 12(b)(6), Harvard asks the Court to dismiss Plaintiff's Complaint. Put simply, Plaintiff has not plausibly alleged that Harvard's consideration of his conduct leading to his 2017 tenure application—the FRB's assessment of whether he had learned from the self-inflicted wounds that contributed to the failure of his 2015 tenure application—could have possibly violated any “rights that are contractual in nature,” Complaint, ¶ 85. Each of Plaintiff's claims—for breach of contract, breach of the covenant of good faith and fair dealing, and promissory estoppel—must be dismissed.

## **II. PLAINTIFF'S FACTUAL ALLEGATIONS**

### **A. Tenure at Harvard Business School.**

The tenure process at HBS is guided by two policies: HBS's Policies and Procedures with Respect to Faculty Appointments and Promotions (“Tenure Policy”) and the Principles and Procedures for Responding to Matters of Faculty Conduct (“FRB Principles”). *See* Complaint, ¶¶ 25, 30. *See also* Ex. 1-2.<sup>1</sup> The Tenure Policy describes both the standards a faculty member must meet to obtain tenure and the multi-step process HBS uses to determine whether a faculty member has met those standards. The FRB Principles provide additional guidance related to tenure applications, like Plaintiffs, where concerns about a faculty member's conduct have been raised. The tenure process culminates in the HBS Dean's decision whether to recommend a faculty

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<sup>1</sup> Because Plaintiff relied on the Tenure Policy and the FRB Principles in his Complaint, it is appropriate for Harvard to attach and rely on them in its Motion to Dismiss. *See* Marram v. Kabrick Offshore Fund, Ltd., 442 Mass. 43, 45 n.5 (2004). The same is true for Exhibits 3-4.

member's promotion to tenure to Harvard's President and, if the HBS Dean chooses to recommend a candidate, the President's decision whether to award tenure.

1. *HBS's Tenure Standards.*

Under the Tenure Policy, tenure is reserved for “extraordinary individuals who have demonstrated their ability and willingness to make a sustained contribution to the study, teaching, and practice of business.” Ex. 1, at 2. The Tenure Policy describes “three standards” for attaining tenure: intellectual contributions, teaching contributions, and “contributions to the HBS community.” In its section describing the third standard—contributions to the HBS community—the Tenure Policy explicitly requires candidates to “uphold HBS Community Values.” *Id.* HBS's statement of Community Values provides that:

The mission of Harvard Business School is to educate leaders who make a difference in the world. Achieving this mission requires an environment of trust and mutual respect, free expression and inquiry, and a commitment to truth, excellence, and lifelong learning.

Students, program participants, faculty, staff, and alumni accept these principles when they join this community. In doing so, they agree to abide by the following Community Values:

Respect for the rights, differences, and dignity of others

Honesty and integrity in dealing with all members of the community

Accountability for personal behavior

HBS can and should be a living model of these values. To this end, community members have a personal responsibility to integrate these values into every aspect of their experience here. Through our personal commitment to these values, we can create an environment in which all can achieve their full potential.

*See* Ex. 3. The Tenure Policy makes clear that adherence to these values is a critical element of the tenure process: “All recommendations for promotion ... must be supported by persuasive evidence that ... [t]he candidate displays honesty, integrity, and respect for others, including faculty, students, and staff.” Ex. 1, at 6.

2. *The HBS Tenure Process.*

The Tenure Policy also describes the process HBS uses to evaluate whether a tenure candidate meets the school’s criteria for tenure, including whether the faculty member seeking promotion has adhered to HBS Community Values. At the beginning of the process, the candidate submits a set of materials, including a personal statement, curriculum vitae, and a portfolio of completed work. *Id.* at 12. A three-member subcommittee of tenured faculty members is then formed to evaluate the candidate’s tenure application. *Id.* at 11-12. In “cases where previous or current conduct raises a question of whether the candidate meets the School’s criteria for ‘Effective Contributions to the HBS Community,’” a Faculty Review Board is convened. Ex. 2, at 3.

The role of the FRB in tenure cases is described in a section of the FRB Principles captioned “Notes on Promotions, Reviews and Reappointments,” which states:

The Senior Associate Dean for Faculty Development will meet annually or as otherwise needed with the Chair of the FRB and the Executive Dean for Administration to discuss whether concerns about conduct have been raised for upcoming candidates for promotion, review, and reappointment.

In this meeting, the FRB Chair and Executive Dean would report on any earlier complaints raised against the candidate and the outcome of local resolution or the FRB investigation. In addition, the FRB and Executive Dean may seek and report on confidential input—from faculty colleagues, staff, students, alumni, or others—about concerns about the candidates that were not previously reported.

If no serious questions about conduct are raised, the promotion, review, and reappointment case will proceed to the Subcommittee or Standing Committee. For cases where previous or current conduct raises a question of whether the candidate meets the School’s criteria for ‘Effective Contributions to the HBS Community,’ the FRB will be asked to undertake a review, beginning with drafting an allegation as outlined above. In these cases, the Subcommittee or Standing Committee will begin its work evaluating the candidate on the criteria excluding collegueship and adherence to Community Values.

The FRB’s conclusions on whether a candidate has upheld the School’s Community Values will be provided to the Appointments Subcommittee or Standing Committee, and included with that group’s report to the full Appointments Committee. In these cases, the Subcommittee or Standing

Committee will prepare its report and recommendation, including its vote, based on the criteria excluding collegueship and adherence to Community Values.

Id., at 3 (emphasis in original). The FRB process is deliberately not rigid, as it recognizes that “it can be difficult to anticipate every circumstance that may arise.” Id.

Thus, where “concerns” or “serious questions” about a tenure candidate’s adherence to Community Values have been raised, the FRB conducts a review to address those concerns, and prepares a report, while the subcommittee convened in the ordinary course to address a candidate’s scholarship and teaching prepares a separate report about the candidate’s qualifications under those two components of the tenure standards. Those reports, in turn, are submitted to HBS’ Appointments Committee, which includes all HBS’s tenured professors.<sup>2</sup> Id.; *see also* Ex. 1, at 11. The Appointments Committee of all tenured faculty meets to consider each tenure candidate’s application and provides advice to the Dean, who, after receiving that input, decides whether to recommend the faculty member for tenure to Harvard’s President. Ex. 1, at 11, 13.

The Tenure Policy contains four provisions particularly relevant here. *First*, the Tenure Policy makes clear that “[t]he primary objective of the appointments process is to provide the Dean with the best possible information, judgment, and advice on various faculty appointments.” Id. at 11. *Second*, confidentiality is critical: “The deliberations of the Appointments Committee are highly confidential. Its usefulness would be destroyed if reports of its deliberations were communicated to anyone outside the Committee.” Id. at 12. The Tenure Policy states explicitly that the Appointment Committee’s votes on a tenure candidate are confidential. Id. at 13. *Third*, the Tenure Policy permits HBS’s Dean to give a candidate more time to fulfill HBS’s standards—in formal terms, to extend a candidate’s non-tenured appointment and apply again. Id. *Fourth*, the Tenure Policy is designed to be flexible. Because “[t]he primary objective of the appointments process is to provide the Dean with the best possible information, judgment, and advice” and “[b]ecause the Dean has the sole responsibility for the recommendations made to the President,

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<sup>2</sup> In years where there are multiple tenure candidates, the members of each ad-hoc subcommittee form what HBS calls a Standing Committee, which makes recommendations to the Appointments Committee. *See* Complaint, ¶ 30.

the Dean may initiate or approve variances from these procedures when, in his or her judgment, the circumstances of a particular case warrant it or are in the best interests of the School.” *Id.* at 11.

3. *Plaintiff’s 2015 Tenure Application.*

Plaintiff was scheduled for review for possible promotion to tenure in 2015. Complaint, ¶ 29. The year before, Plaintiff became embroiled in two public controversies. *Id.* ¶ 22. In January 2014, “commentators raised concerns about a blog post that Plaintiff had written about the company Blinkx ....” *Id.* The Complaint further alleges: “More significant negative publicity came in December 2014, when Plaintiff was the subject of a series of derogatory articles on the website Boston.com regarding his communications with the Brookline restaurant Sichuan Garden.” *Id.* ¶ 23. Plaintiff further alleges that “[o]n July 16, 2015, Senior Associate Dean of the Faculty Paul Healy informed Plaintiff that the Business School had convened [an FRB] to examine concerns about his conduct.” *Id.* ¶ 32. Senior Associate Dean Healy’s letter makes clear that, consistent with the FRB Policies, that review was conducted as part of Plaintiff’s Tenure Review. *See Ex. 4.* Healy’s letter stated:

As you know, promotion decisions at Harvard Business School are evaluated on multiple dimensions. Our focus is not solely on intellectual contributions, although those are of vital importance. We also expect that candidates will help foster a healthy and constructive academic community by, for example, displaying respect for others and contributing to the teaching and research environment of the School. These are among the expectations outlined in the Policies and Procedures with Respect to Faculty Appointments and Promotions under the heading, “Effective Contributions to the HBS Community.”

As we have begun our work on your promotion case, concerns about your conduct-and about your ability to meet this standard-have been raised.

The Principles and Procedures for Responding to Matters of Faculty Conduct (attached for your reference) offer guidance about how the School should consider conduct-related issues in the context of a promotion decision. The FRB, comprising three faculty members and a senior administrator, is responsible for

undertaking a review of cases raising ‘a question of whether the candidate meets the School’s criteria for “Effective Contributions to the HBS Community.”

As outlined in the Principles and Procedures, I have referred this aspect of your case to the FRB, which will be responsible for drafting and providing you with a summary of the concerns (“the allegation, as it is known at the time”).

Following its review, the FRB issued a draft report and, subsequently, a final report concluding that “Plaintiff had not upheld HBS’s Community Values in the Blinkx or Sichuan Garden incidents, or in certain interactions with others at HBS.” Complaint ¶ 36. The 2015 FRB provided its report—and Plaintiff’s Responses—to the Standing Committee of the Appointments Committee. *Id.* ¶ 38. Although, under HBS’s Tenure Policy, this conclusion meant that Plaintiff had not satisfied HBS’s tenure standards, HBS gave Edelman a second chance. The Standing Committee recommended that Plaintiff’s tenure case be delayed for two years, extending his appointment as an Associate Professor until 2018. *Id.* ¶ 40. During that time, Plaintiff was asked to take a number of steps to demonstrate that he had learned from his actions in 2014. *Id.*<sup>3</sup>

#### 4. *Plaintiff’s 2017 Tenure Application.*

In March 2017, Plaintiff again sought tenure and, consistent with the Tenure Policy, submitted materials related to his scholarship and teaching to the subcommittee that had been formed to evaluate his tenure case. *Id.* ¶ 46. At the same time, Plaintiff wrote a “letter to the FRB describing what he had learned from the events it had criticized in 2015, and the steps he had taken to successfully avoid any recurrence. He provided a lengthy list of faculty and staff who he believed would attest to positive interactions with him.” *Id.* On July 6, 2017, the FRB wrote to Plaintiff, stating that the FRB was reconvening to address three areas of concern:

- Whether you understand the aspects of your conduct—regardless of your intent—that made them problematic;
- Whether there is sufficient evidence of changed behavior;
- Whether there is a reasonable expectation that your changed behavior will be sustained in the future.

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<sup>3</sup> The Complaint does not make claims based on the 2015 FRB or allege that the 2015 FRB’s work violated the FRB Policy.

Complaint ¶ 47. The FRB gave Plaintiff the opportunity to provide “detailed examples of how he changed his thinking about activities and interactions with staff.” *Id.* ¶ 48. The FRB interviewed Plaintiff and he provided information responding to concerns that the FRB raised. *Id.* ¶¶ 49-51. On September 1, 2017, the FRB wrote Plaintiff to ask about his outside activities, including his activities representing a class of passengers suing American Airlines over bag fees, and the disclosure statement he had written related to another article he had published. *Id.* ¶ 51. Plaintiff responded to each of these inquiries.

On September 27, 2018, the FRB gave Plaintiff a draft of its report. *Id.* ¶ 54. The Report included positive feedback, but also reported what it had learned from faculty and staff who had expressed criticism of Plaintiff’s actions and conduct. *Id.* ¶¶ 54-64. The Report also expressed a concern that Plaintiff did not disclose work he had done for a competitor of a company he had published about: “Plaintiff should have disclosed, in certain work about Google, that he had consulted with Microsoft in the past.” *Id.* ¶¶ 62-66. The FRB’s draft report identified six specific instances raising questions about the disclosures in papers he had published. *Id.* ¶ 66.

Once again, Plaintiff had an opportunity to respond to the draft report and, after receiving his response, the FRB submitted its final report (including Plaintiff’s response to the draft report) to the Appointments Committee. *Id.* ¶ 71. The Committee discussed Plaintiff’s candidacy and, plaintiff alleges, more than 40% of its members voted against tenure. *Id.* ¶ 71. Dean Nitin Nohria chose not to recommend to Harvard’s President that Plaintiff be granted tenure. *Id.* ¶¶ 71-77.

### **III. ARGUMENT**

#### **A. Plaintiff’s Breach of Contract Claim Fails as a Matter of Law.**

1. *Plaintiff’s Allegations Must Plausibly Suggest an Entitlement to Relief.*

To survive a motion to dismiss, a complaint must provide more than “‘labels and conclusions’ .... What is required at the pleading stage are factual ‘allegations plausibly suggesting (not merely consistent with)’ an entitlement to relief.” *Iannacchino v. Ford Motor Co.*, 451 Mass. 623, 636 (2008) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555-557 (2007)). The



“threshold requirement” necessitates that “the plain statement possesses enough heft to show that the pleader is entitled to relief.” *Id.* (quoting Bell Atl. Corp., 550 U.S. at 557). Courts must “not accept legal conclusions cast in the form of factual allegations.” Berkowitz v. President & Fellows of Harvard College, 358 Mass. App. Ct. 262, 270 (2008) (citations omitted). “[O]nly when ... conclusions are logically compelled, or at least supported, by the stated facts, that is, when the suggested inference rises to what experience indicates is an acceptable level of probability, that ‘conclusions’ become ‘facts’ for pleading purposes.” Schaer v. Brandeis Univ., 432 Mass. 434, 479 (2002) (quoting Dartmouth Review v. Dartmouth College, 889 F.2d 13, 16 (1st Cir. 1989)).

2. *Under Massachusetts Law, Universities Are Given Wide Discretion to Make Tenure Decisions.*

Plaintiff claims that Harvard breached an implied contract with him when it denied his tenure application. More specifically, Plaintiff claims that the FRB failed to follow its procedures, and its report resulted in his tenure denial.<sup>4</sup> Where, as here, a faculty member claims that a university’s policies or procedures creates “rights that are contractual in nature,” Complaint, ¶ 85, Massachusetts courts “are guided by two fundamental principles.” Berkowitz, 358 Mass. App. Ct. at 269 (affirming Rule 12(b)(6) dismissal of tenure case). *First*, they rely upon the “standard of ‘reasonable expectation—what meaning the party making the manifestation, the university, should reasonably expect the other party to give it.’” *Id.* (citation omitted). *Second*, they “adhere to the principle that ‘courts are chary about interfering with academic ... decisions made by private colleges and universities.’” *Id.* (citation omitted).

Courts must be extremely wary of intruding into the world of university tenure decisions. These decisions necessarily hinge on subjective [judgments] regarding the applicant’s academic excellence, teaching ability, creativity, contributions to the university community, rapport with students and colleagues,

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<sup>4</sup> Harvard does not concede that the FRB Principles, first adopted after Plaintiff submitted his tenure application in 2015, constituted an implied contract, legally binding on Harvard. *See generally* Warren v. Children’s Hosp. Corp., 2023 U.S. Dist. LEXIS 9936 (D. Mass. Jan. 20, 2023) (noting factors mitigating against concluding that policies created implied contracts). Nor does Harvard concede that the only reason Plaintiff was denied tenure was because of the matters discussed in the FRB report.

and other factors that are not susceptible of quantitative measurement. Therefore, in the absence of a violation of a reasonable expectation created by the contract, or arbitrary and capricious conduct by the university, courts are not to intrude into university decision-making.

*Id.* (citations omitted). These two principles, applied to the allegations in Plaintiff’s Complaint, show clearly that Plaintiff’s breach of contract claim must be dismissed. This is particularly true given the FRB Policy’s language: “The FRB procedure is designed to be flexible, recognizing the need to weigh multiple factors such as the nature and seriousness of the conduct in question, the supporting evidence, and any mitigating factors and circumstances. At the same time, the FRB procedure aims to provide a framework to allow an appropriate resolution of concerns in a wide variety of circumstances.” Ex. 2, at 2-3. The flexibility the FRB Policy itself describes precludes a finding that the Plaintiff has alleged any plausible breach of contract. And HBS’s actions, under the circumstances, were neither arbitrary nor capricious.

3. *Plaintiff’s Claims that the 2017 FRB violated the FRB Policy Are Without Merit.*

Plaintiff alleges that the 2017 FRB violated the FRB Policy in five ways.

*Plaintiff’s Claim that the FRB Failed to Disclose the Evidence Gathered.* Plaintiff alleges that the FRB Policy “requires the FRB to prepare a draft report that includes ‘the evidence gathered’” but claims “the 2017 FRB did not.” Complaint ¶¶ 87-88. This contention is wrong in at least three respects. *First*, Plaintiff’s Complaint shows that the draft report did include the evidence gathered.<sup>5</sup> Indeed, Paragraphs 54 to 70 of the Complaint describe that evidence in detail, including positive comments from some colleagues, *Id.* ¶¶ 54-55; negative comments from others, *Id.* ¶¶ 56-58; specific concerns about his disclosures concerning his written work about Google, *Id.* ¶¶ 62-67; and specific concerns about his acting as legal counsel in connection with an American Airlines class-action lawsuit, *Id.* ¶¶ 68-69.

*Second*, FRB Principles do not require the FRB to record or transcribe witness interviews and attach them to the report, or to disclose the names of every witness the FRB interviewed. If

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<sup>5</sup> Subject to the entry of an appropriate Protective Order, Harvard is prepared to provide the draft report to the Court under seal so the Court can see for itself precisely how the draft report disclosed evidence to the Plaintiff.

HBS had intended the FRB to attach every item it reviewed, create a transcript of every witness interview, or even to identify the witnesses it interviewed, it would have been simple for the FRB Principles to say so. They do not. Indeed, to the contrary, the FRB Principles repeatedly refer to the importance of confidentiality and privacy: “the FRB and Executive Dean may seek and report on *confidential* input—from faculty colleagues, staff, students, alumni, or others—about concerns about the candidates .... *Privacy and confidentiality* are important considerations; information generally should be shared only on a need-to-know basis, and consistent with what is practicable... the work and activities of the FRB are considered *private*...” Ex. 2, at 2-3 (emphasis added). Given this language, and the overriding concern about confidentiality in the tenure process, Plaintiff cannot plausibly contend that a reasonable person would have expected civil litigation style discovery.

*Third*, the FRB Principles were “designed to be flexible, recognizing the need to weigh multiple factors such as the nature and seriousness of the conduct in question, the supporting evidence, and any mitigating factors and circumstances.” They are intended to provide a “framework to allow an appropriate resolution of concerns in a wide variety of circumstances.” Plaintiff cannot plausibly claim the report’s disclosure of evidence was not sufficient under the alleged agreement.

*Plaintiff’s Claim That the FRB Exceeded its Authority.* Plaintiff contends that the 2017 FRB’s scope exceeded proper bounds, alleging that under the FRB Policy, the FRB is permitted to investigate only “instances of egregious behavior or actions or incidents that indicate a persistent and pervasive pattern of problematic conduct.” According to Plaintiff, the “2017 FRB alleged neither of these.” *Id.* ¶¶ 91-92. As an initial matter, it is difficult to understand how anyone can claim all the incidents alleged in the 2015 and 2017 reviews were not serious or indicative of a pattern of problematic conduct. Further, Plaintiff’s claim simply ignores the FRB Policy and the very facts he alleges in his Complaint. The FRB Policy relating to the tenure process calls for the FRB to convene where “previous or current conduct raises a question of whether the candidate meets the School’s criteria for ‘Effective Contributions to the HBS Community.’” *See* Ex. 2, at 3.

Plaintiff's own Complaint acknowledged that, in 2015, his conduct not only raised a question about whether he met the "Effective Contributions" criteria but resulted in a two-year delay in his consideration for tenure. Indeed, Plaintiff himself wrote to the FRB at the outset of his tenure process in 2017; it would be decidedly *unreasonable* for Plaintiff to expect that the FRB would merely take his written statement at face value, without any further engagement.

*Plaintiff's Claim that the FRB Failed to Draft a Summary of the Allegations.* Plaintiff argues that the FRB Policy requires the FRB Chair to draft a "summary of the allegation, as it is known at the time" at the outset of the process and claims the 2017 FRB "failed to articulate any allegation." Complaint ¶¶ 93-94. Plaintiff's claim is self-defeating. The questions that the FRB raised with Plaintiff in 2017, like the allegations in the 2015 FRB review, plainly expressed "a summary of the concerns" that the FRB intended to focus on:

- Whether you understand the aspects of your conduct-regardless of your intent-that made them problematic;
- Whether there is sufficient evidence of changed behavior;
- Whether there is a reasonable expectation that your changed behavior will be sustained in the future.

*Id.* ¶ 47. The FRB gave Plaintiff the opportunity to provide "detailed examples of how he changed his thinking about activities and interactions with staff." *Id.* ¶ 48. The FRB interviewed him, and he provided information responding to concerns that the FRB raised about his outside activities. *Id.* ¶¶ 49-51. The FRB gave Plaintiff a draft of its report and permitted him to respond to the full range of what it had learned about his interactions with others (positive and negative), concerns about disclosures relating to his published work about Google (identifying six papers, in particular), and his role in a class action litigation against American Airlines. *Id.* ¶¶ 54-70. In 2015, Senior Associate Dean Healy had informed Plaintiff that "the allegation, as it is known at the time" and "a summary of the concerns" of the FRB were synonymous. *See Ex. 4.* Given the three very specific questions the FRB posed to Plaintiff in 2017, and the detailed follow-up questions it asked, Plaintiff can hardly claim ignorance about the focus of the 2017 FRB's work.

*Plaintiff's Claims that the 2017 FRB Improperly Expanded its Scope.* Plaintiff also contends that the 2017 FRB “improperly expanded its scope midway through its 2017 proceedings.” *Id.* ¶ 96. In particular, Plaintiff claims the FRB “changed [its] focus from Plaintiff’s progress since 2015 to an “inquiry into his outside activities,” which he alleges “significantly undermined Plaintiff’s ability to participate in the process and defend himself.” *Id.* ¶¶ 97-98. This argument likewise simply ignores the facts in Plaintiff’s own Complaint, which shows there was no “change.” The 2015 review focused, in substantial part, on Plaintiff’s outside activities—his bullying of a local Chinese restaurant and his issuance of negative reports, financed by an investment company—both events that created a negative media stir (not to mention public claims of market manipulation). No reasonable faculty member, let alone one happy to accept the mantle of “genius,” *Id.* ¶ 37, would have expected the 2017 FRB to ignore his outside activity, particularly where, as here, the concerns about his actions (i.e., writing negative reports about Google after having been on Microsoft’s payroll, and acting as a plaintiff’s class action lawyer) were similar to the activities that had been the focus of the FRB in 2015. And even assuming he somehow did not anticipate this focus, he was afforded ample opportunity to respond, and did respond. *Id.* ¶¶ 48-70.

*Plaintiff's Claim that the FRB Failed to Conduct an “Investigation.”* Finally, Plaintiff claims that, despite the FRB’s Policy language stating that the FRB must “investigate the allegation,” the 2017 FRB did not conduct such an investigation. *Id.* ¶¶ I 00-101. *First*, when the FRB addresses issues in connection with tenure cases, the FRB’s work is called a “review.” Ex. 2, at 3 (“For cases where previous or current conduct raises a question of whether the candidate meets the School’s criteria for ‘Effective Contributions to the HBS Community,’ the FRB will be asked to undertake a review....”). In that context, the FRB gathered facts relevant to its assessment of whether Plaintiff met the third standard for tenure—whether he would make an effective member of the HBS community. *Second*, whether the FRB’s 2017 work is called an “investigation” or a “review,” the Complaint’s description of the FRB’s action in 2017 demonstrates that the FRB took steps to gather information focused on whether Plaintiff had upheld Community Values and met the school’s third criteria for tenure.

**B. Plaintiff's Complaint Fails to Plausibly Allege a Violation of the Implied Covenant of Good Faith and Fair Dealing.**

Plaintiff also claims that Harvard violated the implied covenant of good faith and fair dealing. This claim also fails as a matter of law. While “[e]very contract in Massachusetts is subject, to some extent, to an implied covenant of good faith and fair dealing,” Ayash v. Dana-Farber Cancer Inst., 443 Mass. 367, 385 (2005), this implied covenant “does not create rights or duties beyond those the parties agreed to when they entered into the contract.” Boston Med. Ctr. Corp. v. Secretary of Executive Office of Health & Human Servs., 463 Mass. 447, 460 (2012) (quoting Curtis v. Herb Chambers I-95, Inc., 458 Mass. 674, 680 (2011)). Rather, the implied covenant governs “the manner in which existing contractual duties are performed.” Eigerman v. Putnam Investments, Inc., 450 Mass. 281, 289 (2007). To sufficiently plead a breach of the implied covenant to good faith and fair dealing, Plaintiff must show that a valid, binding contract existed. *See* Ray v. Ropes & Gray LLP, 961 F. Supp. 2d 344, 353 (D. Mass. 2013) (if there is no contract, there cannot be a breach of the implied covenant of good faith and fair dealing).

Plaintiff alleges that Harvard violated the implied covenant of good faith and fair dealing in three ways. Here, because Plaintiff has not established a breach of contract, he cannot state a claim for the breach of the covenant of good faith and fair dealing. Nevertheless, even if Plaintiff establishes a breach of contract, Plaintiff's allegations still fail.

*First*, Plaintiff argues that Harvard violated the implied covenant of good faith and fair dealing because the FRB included staff members who allegedly had personal conflicts with him. Complaint ¶¶ 110-111. But “[a]cademic adversaries ... are not meant to be excluded from the [tenure] process.”<sup>6</sup> Berkowitz, 358 Mass. App. Ct. at 273. Even putting aside this basic principle, Plaintiff's argument also differs from cases where the court has found that the inclusion of individuals with conflicts might violate a contract's terms and implied covenant. *See* Barry v. Trs. of Emmanuel College, 2019 U.S. Dist. LEXIS 20511 at \*24 (D. Mass. Feb. 8, 2019). Here, the FRB Policy does not preclude the participation of staff members on the FRB that allegedly or

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<sup>6</sup> Harvard does not concede that the FRB included anyone whose relationship with Plaintiff was adversarial.

actually have a personal conflict with the individual being reviewed. Moreover, Plaintiff has not alleged facts that suggest the FRB Policy provides any basis for a faculty member to challenge the composition of the FRB. *See id.* at \*24. *Cf Cloud v. Trs. of Bos. Univ.*, 720 F.2d 721, 725-726 (1st Cir. 1983).

*Second*, Plaintiff argues that “procedural errors in the 2017 FRB process amount to a denial of basic fairness.” Complaint ¶ 113. “[T]he denial of basic fairness concept is rooted in the implied promise of good faith and fair dealing, meaning the denial of basic fairness is the student disciplinary adjudications’ version of claiming a breach of the implied covenant of good faith and fair dealing.” *Sonoiki v. President & Fellows of Harvard College*, 37 F.4th 691, 716 (1st Cir. 2022)). *See also*, e.g., *Cloud*, 720 F.2d at 724-725; *Doe v. Stonehill College, Inc.*, 55 F.4th 302, 337-338 (1st Cir. 2022). However, courts have not expanded the principle of “basic fairness” to any faculty contract, let alone in a non-adjudicatory faculty review. Therefore, the Plaintiff’s argument fails.

*Third*, Plaintiff asserts—without factual allegations—that Harvard undertook the 2017 FRB process “in bad faith.” Complaint, ¶ 115. Generally, courts have not held that an employer has acted in bad faith merely because they fail to act “nicely,” *Ayash*, 443 Mass. at 385, but rather, only when employers seek to unjustly enrich themselves by depriving an employee of all compensation or a commission that was fairly or legitimately earned, *King v. Driscoll*, 424 Mass. 1, 6-7 (1996). Here, Plaintiff does not allege such facts. The Court should therefore reject this argument. Indeed, Plaintiff admits that, at the outset of the 2017 tenure process, he wrote to the FRB describing (1) “what he had learned from the events [the FRB] had criticized in 2015,” (2) “the steps he had taken to successfully avoid any recurrence,” and (3) “a lengthy list of faculty and staff who he believed would attest to positive interactions with him,” the FRB reconvened to examine further his understanding of the problematic conduct and evidence of his changed and sustainable behavior. Complaint ¶¶ 46-47. The FRB did not convene without reason, nor has Plaintiff plausibly alleged that it sought to examine questions not pertinent to its purpose—to determine whether or not Plaintiff had learned from the earlier events so that the FRB could fairly

assess whether he satisfied the third tenure standard, including whether he upheld the Community Values that HBS explicitly made part of the tenure process. To the extent the FRB requested additional information during the review, *see id.* ¶ 51, it did not change the direction of the review. Instead, it simply enabled the FRB to gather information relevant to the three questions the FRB posed to Plaintiff at the outset, information directly relevant to the FRB’s charge.

**C. The Court Should Also Dismiss Plaintiff’s Promissory Estoppel Claim.**

Plaintiff claims that he is also entitled to recover on a promissory estoppel theory—contending that he relied on Harvard’s promise that it would abide by the FRB Policy when he agreed to stay at HBS in 2015. Complaint, ¶¶ 118-123. The Court should also reject this claim. To prevail on a promissory estoppel claim, Plaintiff must show that: (1) Harvard made a representation intended to induce reliance on his part; (2) an act or omission on his part in reasonable reliance on that representation; and (3) that he suffered a detriment as a consequence of the act or omission. Anzalone v. Admin. Office of the Trial Court, 457 Mass. 647, 661 (2010). The promise must be an unambiguous promise, and the employee’s reliance on the alleged promise must be reasonable. *See Upton v. JWP Businessland*, 425 Mass. 756, 760 (1997). “[T]he party asserting the estoppel theory ‘has a heavy burden to prove that all [three] elements are present,’” Sullivan v. Chief Justice for Admin. & Mgmt. of the Trial Court, 448 Mass. 15, 28 (2006) (quoting Clickner v. Lowell, 422 Mass. 539, 544 (1996)).

Here, Plaintiff cannot point to an unambiguous promise or show that his reliance on any purported promise was reasonable. Indeed, Plaintiff acknowledges that the extension of his appointment was intended to give him time to *demonstrate that he had learned* from the negative publicity that affected his first tenure application ....” Complaint, ¶ 118 (emphasis added). This promise is hardly unambiguous; to the contrary, there were “contingencies attached.” Tinkham v. Jenny Craig, Inc., 1996 Mass. Super. LEXIS 468, at \*26-27 (Super. Ct. Apr. 19, 1996) (rejecting promissory estoppel claim where employee understood that there were contingencies attached to possibility of promotion). Here, Plaintiff knew that it was the Dean’s decision—with advice from



the Appointments Committee, consisting of all HBS tenured faculty—that would determine whether to recommend that he receive tenure and that the ultimate decision was up to Harvard’s President. Harvard made no unambiguous promise of tenure and Plaintiff could not reasonably rely on the promise he claims Harvard did make. “A hope or expectation, even though well founded, is not equivalent to either legal detriment or reliance.” Congregation Kadimah Toras-Moshe v. De Leo, 405 Mass. 365, 366-367 (1989).

#### IV. CONCLUSION

Plaintiff clearly believes that his actions following the 2015 FRB Report and the two-year extension HBS gave him should have assuaged any misgivings his colleagues and HBS’ Dean may have had about his ability—and willingness—to uphold HBS’ Community Values. He likewise clearly believes that he should have been granted tenure. But the HBS Tenure Policy does not provide for self-appointment. It was HBS’ responsibility—and its authority—to decide whether to recommend Plaintiff for tenure. Whatever the Complaint may say about Plaintiff’s character and credentials, it fails to plausibly allege that the Dean’s decision resulted from a process that violated his rights. Harvard respectfully request that the Court dismiss it.

**PRESIDENT & FELLOWS OF HARVARD  
COLLEGE**

By its attorneys,

/s/ Martin F. Murphy

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Dated: May 9, 2023

**CERTIFICATE OF SERVICE**

I, Martin F. Murphy, certify that on March 27, 2023, a copy of a prior version of this document was served via email on the following individuals and on May 9, 2023, following a discussion with counsel on May 4, 2023, this copy was served on these individuals:

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*/s/ Martin F. Murphy*  
\_\_\_\_\_  
Martin F. Murphy

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS:

SUPERIOR COURT

BENJAMIN EDELMAN,

Plaintiff,

v.

PRESIDENT & FELLOWS OF HARVARD  
COLLEGE,

Defendant.

CIVIL ACTION NO. 2384CV00395-F

**HARVARD’S MEMORANDUM IN SUPPORT OF  
ITS MOTION TO DISMISS PLAINTIFF’S COMPLAINT**

**I. INTRODUCTION**

In 2015, Harvard Business School (“HBS”) concluded that Plaintiff, then seeking appointment as a tenured professor at HBS, failed to meet a critical requirement of HBS’s tenure standard: upholding HBS’s Community Values. The Faculty Review Board (“FRB”) HBS convened in connection with Plaintiff’s tenure review, and charged with assessing whether Plaintiff met this standard, reached that conclusion based on a series of concerns: the adequacy of Plaintiff’s disclosures about funding for his published research; the public firestorm Plaintiff set off when he threatened legal action against a Brookline Chinese restaurant owner; and issues related to Plaintiff’s interactions with HBS staff.

Because Plaintiff failed to meet HBS’s criteria for tenure, HBS could have simply rejected his tenure application and ended his affiliation with HBS. Instead, HBS’s leaders gave Plaintiff a second chance—a two-year extension as a non-tenured professor, with the prospect of re-applying for tenure in 2017. Two years later, when Plaintiff applied again, continued concerns about

Plaintiff's disclosures and interactions were raised; HBS's Dean chose not to recommend his promotion to tenure to Harvard's President, and Plaintiff's employment at HBS ended. Now, nearly six years after his departure from HBS, Plaintiff asks the Court to *order* HBS to give him a *third* chance by requiring yet another tenure review. Plaintiff claims that HBS' review of his 2017 tenure application violated his rights and, in particular, that the FRB convened that year failed to follow its procedures.

Pursuant to Mass. R. Civ. P. 12(b)(6), Harvard asks the Court to dismiss Plaintiff's Complaint. Put simply, Plaintiff has not plausibly alleged that Harvard's consideration of his conduct leading to his 2017 tenure application—the FRB's assessment of whether he had learned from the self-inflicted wounds that contributed to the failure of his 2015 tenure application—could have possibly violated any “rights that are contractual in nature,” Complaint, ¶ 85. Each of Plaintiff's claims—for breach of contract, breach of the covenant of good faith and fair dealing, and promissory estoppel—must be dismissed.

## **II. PLAINTIFF'S FACTUAL ALLEGATIONS**

### **A. Tenure at Harvard Business School.**

The tenure process at HBS is guided by two policies: HBS's Policies and Procedures with Respect to Faculty Appointments and Promotions (“Tenure Policy”) and the Principles and Procedures for Responding to Matters of Faculty Conduct (“FRB Principles”). *See* Complaint, ¶¶ 25, 30. *See also* Ex. 1-2.<sup>1</sup> The Tenure Policy describes both the *standards* a faculty member must meet to obtain tenure and the multi-step *process* HBS uses to determine whether a faculty member

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<sup>1</sup> Because Plaintiff relied on the Tenure Policy and the FRB Principles in his Complaint, it is appropriate for Harvard to attach and rely on them in its Motion to Dismiss. *See* Marram v. Kobrick Offshore Fund, Ltd., 442 Mass. 43, 45 n.5 (2004). The same is true for Exhibits 1-7.

has met those standards. The FRB Principles provide additional guidance related to tenure applications, like Plaintiff's, where concerns about a faculty member's conduct have been raised. The tenure process culminates in the HBS Dean's decision whether to recommend a faculty member's promotion to tenure to Harvard's President and, if the HBS Dean chooses to recommend a candidate, the President's decision whether to award tenure.

1. *HBS's Tenure Standards.*

Under the Tenure Policy, tenure is reserved for "extraordinary individuals who have demonstrated their ability and willingness to make a sustained contribution to the study, teaching, and practice of business." Ex. 1, at 2. The Tenure Policy describes "three standards" for attaining tenure: intellectual contributions, teaching contributions, and "contributions to the HBS community." In its section describing the third standard—contributions to the HBS community—the Tenure Policy explicitly requires candidates to "uphold HBS Community Values." *Id.* HBS's statement of Community Values provides that:

The mission of Harvard Business School is to educate leaders who make a difference in the world. Achieving this mission requires an environment of trust and mutual respect, free expression and inquiry, and a commitment to truth, excellence, and lifelong learning.

Students, program participants, faculty, staff, and alumni accept these principles when they join this community. In doing so, they agree to abide by the following Community Values:

Respect for the rights, differences, and dignity of others

Honesty and integrity in dealing with all members of the community

Accountability for personal behavior

HBS can and should be a living model of these values. To this end, community members have a personal responsibility to integrate these values into every aspect of their experience here. Through our personal commitment to these values, we can create an environment in which all can achieve their full potential.

See Ex. 3. The Tenure Policy makes clear that adherence to these values is a critical element of the tenure process: “All recommendations for promotion . . . must be supported by persuasive evidence that . . . [t]he candidate displays honesty, integrity, and respect for others, including faculty, students, and staff.” Ex. 1, at 6.

2. *The HBS Tenure Process.*

The Tenure Policy also describes the process HBS uses to evaluate whether a tenure candidate meets the school’s criteria for tenure, including whether the faculty member seeking promotion has adhered to HBS Community Values. At the beginning of the process, the candidate submits a set of materials, including a personal statement, curriculum vitae, and a portfolio of completed work. *Id.* at 12. A three-member subcommittee of tenured faculty members is then formed to evaluate the candidate’s tenure application. *Id.* at 11-12. In “cases where previous or current conduct raises a question of whether the candidate meets the School’s criteria for ‘Effective Contributions to the HBS Community,’” a Faculty Review Board is convened. Ex. 2, at 3.

The role of the FRB in tenure cases is described in a section of the FRB Principles captioned “Notes on Promotions, Reviews and Reappointments,” which states:

The Senior Associate Dean for Faculty Development will meet annually or as otherwise needed with the Chair of the FRB and the Executive Dean for Administration to discuss whether concerns about conduct have been raised for upcoming candidates for promotion, review, and reappointment.

In this meeting, the FRB Chair and Executive Dean would report on any earlier complaints raised against the candidate and the outcome of local resolution or the FRB investigation. In addition, the FRB and Executive Dean may seek and report on confidential input—from faculty colleagues, staff, students, alumni, or others—about concerns about the candidates that were not previously reported.

If no serious questions about conduct are raised, the promotion, review, and reappointment case will proceed to the Subcommittee or Standing Committee. For cases where previous or current conduct raises a question of whether the candidate meets the School’s criteria for ‘Effective Contributions to the HBS Community,’ the FRB will be asked to undertake a review, beginning with drafting an allegation

as outlined above. In these cases, the Subcommittee or Standing Committee will begin its work evaluating the candidate on the criteria *excluding* collegueship and adherence to Community Values.

The FRB's conclusions on whether a candidate has upheld the School's Community Values will be provided to the Appointments Subcommittee or Standing Committee, and included with that group's report to the full Appointments Committee. In these cases, the Subcommittee or Standing Committee will prepare its report and recommendation, including its vote, based on the criteria *excluding* collegueship and adherence to Community Values.

Id., at 3 (emphasis in original). The FRB process is deliberately not rigid, as it recognizes that "it can be difficult to anticipate every circumstance that may arise." Id.

Thus, where "concerns" or "serious questions" about a tenure candidate's adherence to Community Values have been raised, the FRB conducts a review to address those concerns, and prepares a report, while the subcommittee convened in the ordinary course to address a candidate's scholarship and teaching prepares a separate report about the candidate's qualifications under those two components of the tenure standards. Those reports, in turn, are submitted to HBS' Appointments Committee, which includes all HBS's tenured professors.<sup>2</sup> Id.; *see also* Ex. 1, at 11. The Appointments Committee of all tenured faculty meets to consider each tenure candidate's application and provides advice to the Dean, who, after receiving that input, decides whether to recommend the faculty member for tenure to Harvard's President. Ex. 1, at 11, 13.

The Tenure Policy contains four provisions particularly relevant here. *First*, the Tenure Policy makes clear that "[t]he primary objective of the appointments process is to provide the Dean with the best possible information, judgment, and advice on various faculty appointments." Id. at 11. *Second*, confidentiality is critical: "The deliberations of the Appointments Committee are

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<sup>2</sup> In years where there are multiple tenure candidates, the members of each ad-hoc subcommittee form what HBS calls a Standing Committee, which makes recommendations to the Appointments Committee. *See* Complaint, ¶ 30.

highly confidential. Its usefulness would be destroyed if reports of its deliberations were communicated to anyone outside the Committee.” *Id.* at 12. The Tenure Policy states explicitly that the Appointment Committee’s votes on a tenure candidate are confidential. *Id.* at 13. *Third*, the Tenure Policy permits HBS’s Dean to give a candidate more time to fulfill HBS’s standards—in formal terms, to extend a candidate’s non-tenured appointment and apply again. *Id.* *Fourth*, the Tenure Policy is designed to be flexible. Because “[t]he primary objective of the appointments process is to provide the Dean with the best possible information, judgment, and advice” and “[b]ecause the Dean has the sole responsibility for the recommendations made to the President, the Dean may initiate or approve variances from these procedures when, in his or her judgment, the circumstances of a particular case warrant it or are in the best interests of the School.” *Id.* at 11.

3. *Plaintiff’s 2015 Tenure Application.*

Plaintiff was scheduled for review for possible promotion to tenure in 2015. Complaint, ¶ 29. The year before, Plaintiff became embroiled in two public controversies. *Id.* ¶ 22. In January 2014, “commentators raised concerns about a blog post that Plaintiff had written about the company Blinkx . . . .” *Id.*<sup>3</sup> The Complaint further alleges: “More significant negative publicity

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<sup>3</sup> For example, a Bloomberg story, “Investors Bet Against Stock in Harvard Professor’s Blog,” noted that “[a]t least five investors betting against Internet Video and Advertising company Blinkx Plc (BLNX) benefited after a blog posting by Harvard Business School Professor last week triggered the stock’s biggest plunge ever.” *See* Ex. 4. The Bloomberg article noted that Plaintiff’s blog post originally stated only that “he prepared the research for an unnamed client” but later “added that he had been paid for the work by two U.S. investors, which he still declined to identify. That expanded disclosure came after the stock tumbled and Harvard Business School, citing its conflict-of-interest policy, asked Edelman for more information. It’s unclear if the investors who paid for the research profited from its publication.” *Id.*; *see also* Complaint, ¶ 22. A Financial Times article reported that Blinkx had complained to British financial regulators that Plaintiff’s blog post had resulted in market manipulation. *See* Ex. 5.



came in December 2014, when Plaintiff was the subject of a series of derogatory articles on the website Boston.com regarding his communications with the Brookline restaurant Sichuan Garden.” *Id.* ¶ 23.<sup>4</sup> Plaintiff further alleges that “[o]n July 16, 2015, Senior Associate Dean of the Faculty Paul Healy informed Plaintiff that the Business School had convened [an FRB] to examine concerns about his conduct.” *Id.* ¶ 32. Senior Associate Dean Healy’s letter makes clear that, consistent with the FRB Policies, that review was conducted as part of Plaintiff’s Tenure Review. *See Ex. 7.* Healy’s letter stated:

As you know, promotion decisions at Harvard Business School are evaluated on multiple dimensions. Our focus is not solely on intellectual contributions, although those are of vital importance. We also expect that candidates will help foster a healthy and constructive academic community by, for example, displaying respect for others and contributing to the teaching and research environment of the School. These are among the expectations outlined in the Policies and Procedures with Respect to Faculty Appointments and Promotions under the heading, “Effective Contributions to the HBS Community.”

As we have begun our work on your promotion case, concerns about your conduct—and about your ability to meet this standard—have been raised.

The Principles and Procedures for Responding to Matters of Faculty Conduct (attached for your reference) offer guidance about how the School should consider conduct-related issues in the context of a promotion decision. The FRB, comprising three faculty members and a senior administrator, is responsible for undertaking a review of cases raising ‘a question of whether the candidate meets the School’s criteria for “Effective Contributions to the HBS Community.”

As outlined in the Principles and Procedures, I have referred this aspect of your case to the FRB, which will be responsible for drafting and providing you with a summary of the concerns (“the allegation, as it is known at the time”).

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<sup>4</sup> The first of those articles, headlined “Ben Edelman, Harvard Business School Professor, Goes to War Over \$4 Worth of Chinese Food,” is attached as Ex. 6. The article asks: “If you’ve ever wondered what happens when a Harvard Business School professor thinks a family-run Chinese restaurant screwed him out of \$4, you’re about to find out.” The article included a number of Plaintiff’s emails to the restaurant.

Following its review, the FRB issued a draft report and, subsequently, a final report concluding that “Plaintiff had not upheld HBS’s Community Values in the Blinkx or Sichuan Garden incidents, or in certain interactions with others at HBS.” Complaint, ¶ 36. The 2015 FRB provided its report—and Plaintiff’s Responses—to the Standing Committee of the Appointments Committee. *Id.* ¶ 38. Although, under HBS’s Tenure Policy, this conclusion meant that Plaintiff had not satisfied HBS’s tenure standards, HBS gave Edelman a second chance. The Standing Committee recommended that Plaintiff’s tenure case be delayed for two years, extending his appointment as an Associate Professor until 2018. *Id.* ¶ 40. During that time, Plaintiff was asked to take a number of steps to demonstrate that he had learned from his actions in 2014. *Id.*<sup>5</sup>

4. *Plaintiff’s 2017 Tenure Application.*

In March 2017, Plaintiff again sought tenure and, consistent with the Tenure Policy, submitted materials related to his scholarship and teaching to the subcommittee that had been formed to evaluate his tenure case. *Id.* ¶ 46. At the same time, Plaintiff wrote a “letter to the FRB describing what he had learned from the events it had criticized in 2015, and the steps he had taken to successfully avoid any recurrence. He provided a lengthy list of faculty and staff who he believed would attest to positive interactions with him.” *Id.* On July 6, 2017, the FRB wrote to Plaintiff, stating that the FRB was reconvening to address three areas of concern:

- Whether you understand the aspects of your conduct—regardless of your intent—that made them problematic;
- Whether there is sufficient evidence of changed behavior;
- Whether there is a reasonable expectation that your changed behavior will be sustained in the future.

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<sup>5</sup> The Complaint does not make claims based on the 2015 FRB or allege that the 2015 FRB’s work violated the FRB Policy.

Complaint, ¶ 47. The FRB gave Plaintiff the opportunity to provide “detailed examples of how he changed his thinking about activities and interactions with staff.” *Id.* ¶ 48. The FRB interviewed Plaintiff and he provided information responding to concerns that the FRB raised. *Id.* ¶¶ 49-51. On September 1, 2017, the FRB wrote Plaintiff to ask about his outside activities, including his activities representing a class of passengers suing American Airlines over bag fees, and the disclosure statement he had written related to another article he had published. *Id.* ¶ 51. Plaintiff responded to each of these inquiries.

On September 27, 2018, the FRB gave Plaintiff a draft of its report. *Id.* ¶ 54. The Report included positive feedback, but also reported what it had learned from faculty and staff who had expressed criticism of Plaintiff’s actions and conduct. *Id.* ¶¶ 54-64. The Report also expressed a concern that Plaintiff did not disclose work he had done for a competitor of a company he had published about: “Plaintiff should have disclosed, in certain work about Google, that he had consulted with Microsoft in the past.” *Id.* ¶¶ 62-66. The FRB’s draft report identified six specific instances raising questions about the disclosures in papers he had published. *Id.* ¶ 66.

Once again, Plaintiff had an opportunity to respond to the draft report and, after receiving his response, the FRB submitted its final report (including Plaintiff’s response to the draft report) to the Appointments Committee. *Id.* ¶ 71. The Committee discussed Plaintiff’s candidacy and, plaintiff alleges, more than 40% of its members voted against tenure. *Id.* ¶ 71. Dean Nitin Nohria chose not to recommend to Harvard’s President that Plaintiff be granted tenure. *Id.* ¶¶ 71-77.

### **III. ARGUMENT**

#### **A. Plaintiff’s Breach of Contract Claim Fails as a Matter of Law.**

##### *1. Plaintiff’s Allegations Must Plausibly Suggest an Entitlement to Relief.*

To survive a motion to dismiss, a complaint must provide more than “‘labels and conclusions’ . . . . What is required at the pleading stage are factual ‘allegations’ plausibly

suggesting (not merely consistent with) an entitlement to relief.” Iannacchino v. Ford Motor Co., 451 Mass. 623, 636 (2008) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555-557 (2007)). The “threshold requirement” necessitates that “the plain statement possesses enough heft to show that the pleader is entitled to relief.” Id. (quoting Bell Atl. Corp., 550 U.S. at 557). Courts must “not accept legal conclusions cast in the form of factual allegations.” Berkowitz v. President & Fellows of Harvard College, 358 Mass. App. Ct. 262, 270 (2008) (citations omitted). “[O]nly when . . . conclusions are logically compelled, or at least supported, by the stated facts, that is, when the suggested inference rises to what experience indicates is an acceptable level of probability, that ‘conclusions’ become ‘facts’ for pleading purposes.” Schaer v. Brandeis Univ., 432 Mass. 434, 479 (2002) (quoting Dartmouth Review v. Dartmouth College, 889 F.2d 13, 16 (1st Cir. 1989)).

2. *Under Massachusetts Law, Universities Are Given Wide Discretion to Make Tenure Decisions.*

Plaintiff claims that Harvard breached an implied contract with him when it denied his tenure application. More specifically, Plaintiff claims that the FRB failed to follow its procedures, and its report resulted in his tenure denial.<sup>6</sup> Where, as here, a faculty member claims that a university’s policies or procedures creates “rights that are contractual in nature,” Complaint, ¶85, Massachusetts courts “are guided by two fundamental principles.” Berkowitz, 358 Mass. App. Ct. at 269 (affirming Rule 12(b)(6) dismissal of tenure case). *First*, they rely upon the “standard of ‘reasonable expectation—what meaning the party making the manifestation, the university, should reasonably expect the other party to give it.’” Id. (citation omitted). *Second*, they “adhere to the

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<sup>6</sup> Harvard does not concede that the FRB Principles, first adopted after Plaintiff submitted his tenure application in 2015, constituted an implied contract, legally binding on Harvard. *See generally* Warren v. Children's Hosp. Corp., 2023 U.S. Dist. LEXIS 9936 (D. Mass. Jan. 20, 2023) (noting factors mitigating against concluding that policies created implied contracts). Nor does Harvard concede that the only reason Plaintiff was denied tenure was because of the matters discussed in the FRB report.

principle that ‘courts are chary about interfering with academic . . . decisions made by private colleges and universities.’” Id. (citation omitted).

Courts must be extremely wary of intruding into the world of university tenure decisions. These decisions necessarily hinge on subjective [judgments] regarding the applicant's academic excellence, teaching ability, creativity, contributions to the university community, rapport with students and colleagues, and other factors that are not susceptible of quantitative measurement. Therefore, in the absence of a violation of a reasonable expectation created by the contract, or arbitrary and capricious conduct by the university, courts are not to intrude into university decision-making.

Id. (citations omitted). These two principles, applied to the allegations in Plaintiff’s Complaint, show clearly that Plaintiff’s breach of contract claim must be dismissed. This is particularly true given the FRB Policy’s language: “The FRB procedure is designed to be flexible, recognizing the need to weigh multiple factors such as the nature and seriousness of the conduct in question, the supporting evidence, and any mitigating factors and circumstances. At the same time, the FRB procedure aims to provide a framework to allow an appropriate resolution of concerns in a wide variety of circumstances.” Ex. 2, at 2-3. The flexibility the FRB Policy itself describes precludes a finding that the Plaintiff has alleged any plausible breach of contract. And HBS’s actions, under the circumstances, were neither arbitrary nor capricious.

3. *Plaintiff’s Claims that the 2017 FRB violated the FRB Policy Are Without Merit.*

Plaintiff alleges that the 2017 FRB violated the FRB Policy in five ways.

*Plaintiff’s Claim that the FRB Failed to Disclose the Evidence Gathered.* Plaintiff alleges that the FRB Policy “requires the FRB to prepare a draft report that includes ‘the evidence gathered’” but claims “the 2017 FRB did not.” Complaint, ¶¶ 87-88. This contention is wrong in at least three respects. *First*, Plaintiff’s Complaint shows that the draft report did include the

evidence gathered.<sup>7</sup> Indeed, Paragraphs 54 to 70 of the Complaint describe that evidence in detail, including positive comments from some colleagues, *Id.* ¶¶ 54-55; negative comments from others, *Id.* ¶¶ 56-58; specific concerns about his disclosures concerning his written work about Google, *Id.* ¶¶ 62-67; and specific concerns about his acting as legal counsel in connection with an American Airlines class-action lawsuit, *Id.* ¶¶ 68-69.

*Second*, FRB Principles do not require the FRB to record or transcribe witness interviews and attach them to the report, or to disclose the names of every witness the FRB interviewed. If HBS had intended the FRB to attach every item it reviewed, create a transcript of every witness interview, or even to identify the witnesses it interviewed, it would have been simple for the FRB Principles to say so. They do not. Indeed, to the contrary, the FRB Principles repeatedly refer to the importance of confidentiality and privacy: “the FRB and Executive Dean may seek and report on *confidential* input—from faculty colleagues, staff, students, alumni, or others—about concerns about the candidates . . . . *Privacy and confidentiality* are important considerations; information generally should be shared only on a need-to-know basis, and consistent with what is practicable . . . the work and activities of the FRB are considered *private* . . . .” Ex. 2, at 2-3 (emphasis added). Given this language, and the overriding concern about confidentiality in the tenure process, Plaintiff cannot plausibly contend that a reasonable person would have expected civil litigation style discovery.

*Third*, the FRB Principles were “designed to be flexible, recognizing the need to weigh multiple factors such as the nature and seriousness of the conduct in question, the supporting

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<sup>7</sup> Subject to the entry of an appropriate Protective Order, Harvard is prepared to provide the draft report to the Court under seal so the Court can see for itself precisely how the draft report disclosed evidence to the Plaintiff.

evidence, and any mitigating factors and circumstances.” They are intended to provide a “framework to allow an appropriate resolution of concerns in a wide variety of circumstances.” Plaintiff cannot plausibly claim the report’s disclosure of evidence was not sufficient under the alleged agreement.

*Plaintiff’s Claim That the FRB Exceeded its Authority.* Plaintiff contends that the 2017 FRB’s scope exceeded proper bounds, alleging that under the FRB Policy, the FRB is permitted to investigate only “instances of egregious behavior or actions or incidents that indicate a persistent and pervasive pattern of problematic conduct.” According to Plaintiff, the “2017 FRB alleged neither of these.” *Id.* ¶¶ 91-92. As an initial matter, it is difficult to understand how anyone can claim all the incidents alleged in the 2015 and 2017 reviews were not serious or indicative of a pattern of problematic conduct. Further, Plaintiff’s claim simply ignores the FRB Policy and the very facts he alleges in his Complaint. The FRB Policy relating to the tenure process calls for the FRB to convene where “previous or current conduct raises a question of whether the candidate meets the School’s criteria for ‘Effective Contributions to the HBS Community.’” *See* Ex. 2, at 3. Plaintiff’s own Complaint acknowledged that, in 2015, his conduct not only raised a question about whether he met the “Effective Contributions” criteria but resulted in a two-year delay in his consideration for tenure. Indeed, Plaintiff himself wrote to the FRB at the outset of his tenure process in 2017; it would be decidedly *unreasonable* for Plaintiff to expect that the FRB would merely take his written statement at face value, without any further engagement.

*Plaintiff’s Claim that the FRB Failed to Draft a Summary of the Allegations.* Plaintiff argues that the FRB Policy requires the FRB Chair to draft a “summary of the allegation, as it is known at the time” at the outset of the process and claims the 2017 FRB “failed to articulate any allegation.” Complaint, ¶¶ 93-94. Plaintiff’s claim is self-defeating. The questions that the FRB

raised with Plaintiff in 2017, like the allegations in the 2015 FRB review, plainly expressed “a summary of the concerns” that the FRB intended to focus on:

- Whether you understand the aspects of your conduct—regardless of your intent—that made them problematic;
- Whether there is sufficient evidence of changed behavior;
- Whether there is a reasonable expectation that your changed behavior will be sustained in the future.

Id. ¶ 47. The FRB gave Plaintiff the opportunity to provide “detailed examples of how he changed his thinking about activities and interactions with staff.” Id. ¶ 48. The FRB interviewed him, and he provided information responding to concerns that the FRB raised about his outside activities. Id. ¶ 49-51. The FRB gave Plaintiff a draft of its report and permitted him to respond to the full range of what it had learned about his interactions with others (positive and negative), concerns about disclosures relating to his published work about Google (identifying six papers, in particular), and his role in a class action litigation against American Airlines. Id. ¶¶ 54-70. In 2015, Senior Associate Dean Healy had informed Plaintiff that “the allegation, as it is known at the time” and “a summary of the concerns” of the FRB were synonymous. *See* Ex. 7. Given the three very specific questions the FRB posed to Plaintiff in 2017, and the detailed follow-up questions it asked, Plaintiff can hardly claim ignorance about the focus of the 2017 FRB’s work.

*Plaintiff’s Claims that the 2017 FRB Improperly Expanded its Scope.* Plaintiff also contends that the 2017 FRB “improperly expanded its scope midway through its 2017 proceedings.” Id. ¶ 96. In particular, Plaintiff claims the FRB “changed [its] focus from Plaintiff’s progress since 2015 to an “inquiry into his outside activities,” which he alleges “significantly undermined Plaintiff’s ability to participate in the process and defend himself.” Id. ¶¶ 97-98. This argument likewise simply ignores the facts in Plaintiff’s own Complaint, which shows there was no “change.” The 2015 review focused, in substantial part, on Plaintiff’s outside activities—his



bullying of a local Chinese restaurant and his issuance of negative reports, financed by an investment company—both events that created a negative media stir (not to mention public claims of market manipulation). No reasonable faculty member, let alone one happy to accept the mantle of “genius,” *Id.* ¶ 37, would have expected the 2017 FRB to ignore his outside activity, particularly where, as here, the concerns about his actions (i.e., writing negative reports about Google after having been on Microsoft’s payroll, and acting as a plaintiff’s class action lawyer) were similar to the activities that had been the focus of the FRB in 2015. And even assuming he somehow did not anticipate this focus, he was afforded ample opportunity to respond, and did respond. *Id.* ¶¶ 48-70.

*Plaintiff’s Claim that the FRB Failed to Conduct an “Investigation.”* Finally, Plaintiff claims that, despite the FRB’s Policy language stating that the FRB must “investigate the allegation,” the 2017 FRB did not conduct such an investigation. *Id.* ¶¶ 100-101. *First*, when the FRB addresses issues in connection with tenure cases, the FRB’s work is called a “review.” Ex. 2, at 3 (“For cases where previous or current conduct raises a question of whether the candidate meets the School’s criteria for ‘Effective Contributions to the HBS Community,’ the FRB will be asked to undertake a review. . . .”). In that context, the FRB gathered facts relevant to its assessment of whether Plaintiff met the third standard for tenure—whether he would make an effective member of the HBS community. *Second*, whether the FRB’s 2017 work is called an “investigation” or a “review,” the Complaint’s description of the FRB’s action in 2017—including interviewing the more than a dozen witnesses the Plaintiff proffered—demonstrates that the FRB took steps to gather information focused on whether Plaintiff had upheld Community Values and met the school’s third criteria for tenure.

**B. Plaintiff's Complaint Fails to Plausibly Allege a Violation of the Implied Covenant of Good Faith and Fair Dealing.**

Plaintiff also claims that Harvard violated the implied covenant of good faith and fair dealing. This claim also fails as a matter of law. While “[e]very contract in Massachusetts is subject, to some extent, to an implied covenant of good faith and fair dealing,” Ayash v. Dana-Farber Cancer Inst., 443 Mass. 367, 385 (2005), this implied covenant “does not create rights or duties beyond those the parties agreed to when they entered into the contract.” Boston Med. Ctr. Corp. v. Secretary of Executive Office of Health & Human Servs., 463 Mass. 447, 460 (2012) (quoting Curtis v. Herb Chambers I-95, Inc., 458 Mass. 674, 680 (2011)). Rather, the implied covenant governs “the manner in which existing contractual duties are performed.” Eigerman v. Putnam Investments, Inc., 450 Mass. 281, 289 (2007). To sufficiently plead a breach of the implied covenant to good faith and fair dealing, Plaintiff must show that a valid, binding contract existed. *See* Ray v. Ropes & Gray LLP, 961 F. Supp. 2d 344, 353 (D. Mass. 2013) (if there is no contract, there cannot be a breach of the implied covenant of good faith and fair dealing).

Plaintiff alleges that Harvard violated the implied covenant of good faith and fair dealing in three ways. Here, because Plaintiff has not established a breach of contract, he cannot state a claim for the breach of the covenant of good faith and fair dealing. Nevertheless, even if Plaintiff establishes a breach of contract, Plaintiff's allegations still fail.

*First*, Plaintiff argues that Harvard violated the implied covenant of good faith and fair dealing because the FRB included staff members who allegedly had personal conflicts with him. Complaint, ¶¶ 110-111. But “[a]cademic adversaries . . . are not meant to be excluded from the [tenure] process.”<sup>8</sup> Berkowitz, 358 Mass. App. Ct. at 273. Even putting aside this basic principle,

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<sup>8</sup> Harvard does not concede that the FRB included anyone whose relationship with Plaintiff was adversarial.

Plaintiff's argument also differs from cases where the court has found that the inclusion of individuals with conflicts might violate a contract's terms and implied covenant. *See Barry v. Trs. of Emmanuel College*, 2019 U.S. Dist. LEXIS 20511 at \*24 (D. Mass. Feb. 8, 2019). Here, the FRB Policy does not preclude the participation of staff members on the FRB that allegedly or actually have a personal conflict with the individual being reviewed;. Moreover, Plaintiff has not alleged facts that suggest that the individual's nor does it provide any basis for a faculty member to challenge the composition of the FRB participation in the FRB has destroyed the impartiality of the fact-finding mission. *See id.* at \*24. *C.f. Cloud v. Trs. of Bos. Univ.*, 720 F.2d 721, 725-726 (1st Cir. 1983).

*Second*, Plaintiff argues that “procedural errors in the 2017 FRB process amount to a denial of basic fairness.” Complaint, ¶ 113. “[T]he denial of basic fairness concept is rooted in the implied promise of good faith and fair dealing, meaning the denial of basic fairness is the student disciplinary adjudications’ version of claiming a breach of the implied covenant of good faith and fair dealing.” *Sonoiki v. President & Fellows of Harvard College*, 37 F.4th 691, 716 (1st Cir. 2022)). *See also*, e.g., *Cloud*, 720 F.2d at 724-725; *Doe v. Stonehill College, Inc.*, 55 F.4th 302, 337-338 (1st Cir. 2022). However, courts have not expanded the principle of “basic fairness” to any faculty contract, let alone in a non-adjudicatory faculty review. Therefore, the Plaintiff's argument fails.

*Third*, Plaintiff asserts—without factual allegations—that Harvard undertook the 2017 FRB process “in bad faith.” Complaint, ¶ 115. Generally, courts have not held that an employer has acted in bad faith merely because they fail to act “nicely,” *Ayash*, 443 Mass. at 385, but rather, only when employers seek to unjustly enrich themselves by depriving an employee of all compensation or a commission that was fairly or legitimately earned, *King v. Driscoll*, 424 Mass.

1, 6-7 (1996). Here, Plaintiff does not allege such facts. The Court should therefore reject this argument. Indeed, Plaintiff admits that, at the outset of the 2017 tenure process, he wrote to the FRB describing (1) “what he had learned from the events [the FRB] had criticized in 2015,” (2) “the steps he had taken to successfully avoid any recurrence,” and (3) “a lengthy list of faculty and staff who he believed would attest to positive interactions with him,” the FRB reconvened to examine further his understanding of the problematic conduct and evidence of his changed and sustainable behavior. Complaint, ¶¶ 46-47. The FRB did not convene without reason, nor has Plaintiff plausibly alleged that it sought to examine questions not pertinent to its purpose—to determine whether or not Plaintiff had learned from the earlier events so that the FRB could fairly assess whether he satisfied the third tenure standard, including whether he upheld the Community Values that HBS explicitly made part of the tenure process. To the extent the FRB requested additional information during the review, *see id.* ¶ 51, it did not change the direction of the review. Instead, it simply enabled the FRB to gather information relevant to the three questions the FRB posed to Plaintiff at the outset, information directly relevant to the FRB’s charge.

**C. The Court Should Also Dismiss Plaintiff’s Promissory Estoppel Claim.**

Plaintiff claims that he is also entitled to recover on a promissory estoppel theory—contending that he relied on Harvard’s promise that it would abide by the FRB Policy when he agreed to stay at HBS in 2015. Complaint, ¶¶ 118-123. The Court should also reject this claim. To prevail on a promissory estoppel claim, Plaintiff must show that: (1) Harvard made a representation intended to induce reliance on his part; (2) an act or omission on his part in reasonable reliance on that representation; and (3) that he suffered a detriment as a consequence of the act or omission. Anzalone v. Admin. Office of the Trial Court, 457 Mass. 647, 661 (2010). The promise must be an unambiguous promise, and the employee’s reliance on the alleged promise must be reasonable.

See Upton v. JWP Businessland, 425 Mass. 756, 760 (1997). “[T]he party asserting the estoppel theory ‘has a heavy burden to prove that all [three] elements are present,’” Sullivan v. Chief Justice for Admin. & Mgmt. of the Trial Court, 448 Mass. 15, 28 (2006) (quoting Clickner v. Lowell, 422 Mass. 539, 544 (1996)).

Here, Plaintiff cannot point to an unambiguous promise or show that his reliance on any purported promise was reasonable. Indeed, Plaintiff acknowledges that the extension of his appointment was intended to give him time to *demonstrate that he had learned* from the negative publicity that affected his first tenure application . . . .” Complaint, ¶118 (emphasis added). This promise is hardly unambiguous; to the contrary, there were “contingencies attached.” Tinkham v. Jenny Craig, Inc., 1996 Mass. Super. LEXIS 468, at \*26-27 (Super. Ct. Apr. 19, 1996) (rejecting promissory estoppel claim where employee understood that there were contingencies attached to possibility of promotion). Here, Plaintiff knew that it was the Dean’s decision—with advice from the Appointments Committee, consisting of all HBS tenured faculty—that would determine whether to recommend that he receive tenure and that the ultimate decision was up to Harvard’s President. Harvard made no unambiguous promise of tenure and Plaintiff could not reasonably rely on the promise he claims Harvard did make. “A hope or expectation, even though well founded, is not equivalent to either legal detriment or reliance.” Congregation Kadimah Toras-Moshe v. De Leo, 405 Mass. 365, 366-367 (1989).

#### IV. CONCLUSION

Plaintiff clearly believes that his actions following the 2015 FRB Report and the two-year extension HBS gave him should have assuaged any misgivings his colleagues and HBS' Dean may have had about his ability—and willingness—to uphold HBS' Community Values. He likewise clearly believes that he should have been granted tenure. But the HBS Tenure Policy does not provide for self-appointment. It was HBS' responsibility—and its authority—to decide whether to recommend Plaintiff for tenure. Whatever the Complaint may say about Plaintiff's character and credentials, it fails to plausibly allege that the Dean's decision resulted from a process that violated his rights. Harvard respectfully request that the Court dismiss it.

**PRESIDENT & FELLOWS OF HARVARD  
COLLEGE**

By its attorneys,

*/s/ Martin F. Murphy*

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Dated: March 27, 2023

**CERTIFICATE OF SERVICE**

I, Jasmine N. Brown, certify that on March 27, 2023, a copy of this document was served via email on the following individuals:

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\_\_\_\_\_  
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# **EXHIBIT 1**

## HARVARD BUSINESS SCHOOL

### POLICIES AND PROCEDURES WITH RESPECT TO FACULTY APPOINTMENTS AND PROMOTIONS\*

#### THE MISSION OF HARVARD BUSINESS SCHOOL

The mission of Harvard Business School is to educate leaders who make a difference in the world.

We accomplish this mission by

- building new managerially-relevant knowledge addressed to scholars, educators, and managers;
- teaching the art and science of general management and creating a transforming experience in our classrooms and programs;
- communicating important ideas and materials to leaders around the world.

#### PREAMBLE

1. Our standards for appointment and promotion are intended to attract, develop, and retain faculty who advance the School's mission through their scholarship, their teaching, and their contribution to management education and the advancement of management practice. As tenured faculty, it is our responsibility to communicate and uphold these standards.
2. HBS strives to remain at the forefront of the complex and constantly evolving field of business administration. We must appoint to our faculty individuals who create important ideas; who can communicate those ideas to students, managers, scholars, and educators in a way that transforms their thinking; and who have the capacity to lead and run the School. We also strive for a diverse faculty committed to a general management perspective and to student learning, which is facilitated through the School's participatory learning model. We will be a preeminent graduate professional school only if we appoint to our permanent faculty those individuals who excel in their areas of intellectual endeavor and contribute to the overall mission of Harvard Business School.

#### PART I STANDARDS

3. The School encourages a wide range of intellectual activities among its faculty. At the same time, we have a common commitment to advance management practice and education through shared interests, objectives, and values. As individuals, all candidates for promotion must demonstrate the managerial relevance of their principal work and its long-term congruence with the mission of the School. As a group, they should be demographically and intellectually diverse.
4. While individual initiative is the driving force of the School's intellectual vitality, the School also values individuals' contributions to the creation of a community that fosters the work and development of others. In appraising individuals, the School considers both their record of performance and their continued commitment to contributing to the work and mission of the School.

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\* Approved by vote of the tenured faculty, 20 September 2007; Articles 19-20 revised 16 May 2013 by vote of the tenured faculty.

Three standards guide our evaluation of candidates:

- A. Intellectual contributions
- B. Teaching contributions
- C. Contributions to the HBS community

5. These standards, as discussed below, guide the evaluation of *all* of our promotion and appointment decisions: tenured Professors (both from within HBS and lateral hires), untenured Associate Professors, and Professors of Management Practice. While these positions are different—and often the backgrounds of the individuals considered are quite different—we firmly believe that having this full complement of talented faculty enables HBS to carry out its mission most effectively. The sections below detail, in turn, the standards for promotion to full Professor with tenure, untenured Associate Professor, and Professor of Management Practice.

#### **PART I.A: STANDARDS FOR PROMOTION TO PROFESSOR OF BUSINESS ADMINISTRATION**

6. The only appointment that carries tenure is Professor of Business Administration. Tenure is granted to extraordinary individuals who have demonstrated their ability and willingness to make a sustained contribution to the study, teaching, and practice of business. We consider multiple criteria, as summarized below and explained in greater detail in Sections 7 through 15:

(a) Intellectual contributions

All successful candidates must make intellectual contributions that are recognized as outstanding. Regardless of the form of the work, or the audiences to which it is addressed, this work must meet certain common standards of excellence as described below. Finally, the candidate must be judged to be a leading scholar or educator.

(b) Teaching contributions

All successful candidates must demonstrate that they are effective teachers in the HBS discussion-based teaching environment. Teaching effectiveness includes not only classroom performance, but also contributions to the body of teaching materials that sustain the teaching programs at HBS and support of other faculty in our community.

(c) Contributions to the HBS community

All successful candidates must uphold HBS Community Values; accept a fair share of School responsibilities; and contribute to the community.

Outstanding abilities, excellence of past performance, and promise of future performance are vital criteria; however, they alone are not enough to ensure promotion. The assessment of the person's achievements and promise to perform and grow at HBS must be weighed against an assessment of the abilities of other available candidates; the limitation of available openings over time; and the need to balance the abilities of faculty across fields with the needs of the School.

## OUTSTANDING INTELLECTUAL CONTRIBUTIONS

7. Candidates for tenure must demonstrate an intellectual contribution that is recognized as outstanding. This intellectual contribution can take many forms but must meet the following standards:

(a) The subject of inquiry

A candidate must establish a leading role in the evolution of ideas in an important area of inquiry—one with broad and enduring significance for business practice. It is the candidate's responsibility to demonstrate the managerial relevance of his or her work.

(b) The intended audience

To be successful in carrying out its mission, HBS must address audiences of scholars, educators, and managers. It is desirable that over an entire academic career, HBS professors will have had an influence on all of these groups. As a condition for granting tenure, the work of a candidate must (1) be recognized as having had a major influence on at least one of these audiences (the primary audience) and (2) demonstrate the potential to make a significant contribution to one of the others (the secondary audience). Some candidates will make major integrated contributions to multiple audiences. Both influence and potential contribution are evaluated primarily on the basis of written work.

(c) Common qualities of outstanding intellectual contributions

Regardless of the audience(s) that a candidate for tenure addresses, his or her work will be evaluated using a common set of standards. A panel of qualified reviewers will be asked the following:

(i) Does the work address important problems relevant to management practice?

(ii) Has the work been conducted with due care? In particular, does it use appropriate methods; is it logically consistent; does it embody a tight connection between its argument and supporting evidence; and is it informed by and does it acknowledge prior work?

(iii) Is the work compelling in that it meaningfully changes the way members of the intended audience think about the problems it addresses?

(d) Judged as a leading educator or scholar

To qualify for tenure, the candidate must produce work that is judged to be outstanding by those members of the academic and business communities, both inside and outside the School, who are best qualified to evaluate its quality and importance. Reviewers will be asked:

“Is the candidate among the best educators or scholars who have undertaken comparable work at the same stage of their careers?”

8. Intellectual contributions addressed to educators

Excellent course development makes a significant and influential contribution to educational programs in business management and to the understanding of business practice. It typically involves either a description and analysis of a new phenomenon, or a new conceptual structure or framework that organizes the description and analysis of a known phenomenon in a logically consistent and compelling manner. In addition to facilitating substantial student learning, excellent course development should compel both educators and students to think about important business problems more productively than they did before. The work product of a candidate demonstrating excellence in course development generally consists of three parts:

- (a) First, a series of individually excellent teaching vehicles that evoke fresh insights into issues of importance to managers. These are typically cases, but they can also include simulations, in-class exercises, videos, interactive software, and other materials.
- (b) Second, teaching notes that incorporate substantive learning objectives, describe conceptual underpinnings, and offer effective “in-class” teaching plans. These notes allow educators other than the case author to make effective use of these materials in their own classrooms.
- (c) Third, one or more documents that collect and present the intellectual contributions contained in the course materials. Such documentation will generally take the form of a comprehensive course note, a set of module note(s), a book, or a set of articles addressed to managers or academics.

Regardless of the approach to course development a candidate may choose to pursue, the documentation offered as evidence should fully elaborate on the conceptual and analytical linkages among the course materials; relate the work to existing knowledge; and lift the learning to a level beyond that achieved from the individual cases. The end result of excellent course development is a body of work that has a significant impact on the way educators (internally and externally) think about and ideally teach important problems relevant to the practice of business administration.

9. Intellectual contributions addressed to scholars

Excellent research makes a significant and influential contribution to the understanding of important, managerially-relevant topics. It can include conceptual work (theory development, framework-building) or empirical contributions (theory testing, description of phenomena, establishment of facts) that advance understanding or knowledge in a significant way.

Excellent research can employ any research methodology (e.g., clinical, statistical, archival, experimental, simulation, mathematical modeling) that is useful in advancing knowledge. Likewise, the research can influence scholars through a variety of publications (e.g., books, peer-reviewed journals, practitioner-oriented publications, course notes, cases, and teaching notes). Whatever its form, the work must meet the highest standards of conceptual or empirical rigor appropriate to the nature of the intellectual inquiry, while demonstrating appropriate linkages to related research and engagement with alternative views.

To meet the School's standards, the research must address a subject of relevance to business administration. Successful candidates must demonstrate relevance in at least some portion of their research output, which may include teaching notes or practitioner-oriented articles. The end result of excellent research is a body of work that has a significant impact on the way scholars think about important problems relevant to the practice of business administration.

10. Intellectual contributions addressed to managers

While work addressed for educators or scholars must be managerially-relevant, intellectual contributions addressing managers should go beyond merely showing relevance; they must be produced in a form specifically addressed to and accessible by this audience. Often this work is prescriptive in nature, providing guidance for managers. It might take the form of articles written for managerially-oriented publications, books written for this audience, or other publication media. The contributions of this work must meet the same criteria of excellence and impact that are required for excellent course development or scholarly research, as described in Sections 8 and 9 above. The end result of excellent research addressed to managers is a body of work that has a significant impact on the way managers think about—and ideally the actions they take regarding—important problems relevant to the practice of business administration.

11. Interdisciplinary and integrated intellectual contributions

Some candidates may produce a body of work that either cuts across disciplinary boundaries or blurs the distinction between primary and secondary audiences. Because the power of such work lies in its integrative nature, evaluation in these cases will be based on the total work product and the extent to which its core idea(s) are connected and integrated in the various media. Candidates will not be judged on the quantity of their contributions in any one dimension, but rather on the total impact of the body of work. In every other way, the work must meet the criteria described in Sections 6(a), 7, 8, 9, and 10 above.

### **EFFECTIVE TEACHING CONTRIBUTIONS**

12. To carry out our mission, HBS requires a faculty skilled in discussion-based learning. All candidates for tenure must demonstrate a commitment to teaching and a capacity for sustained effectiveness as teachers.

Our distinctive HBS teaching model has four components: (a) developing course materials (typically, but not exclusively, field-based cases); (b) delivering classes that engage students in discussion-based learning that explores important management problems; (c) sharing teaching insights with colleagues through contributions to teaching groups (when applicable) and teaching notes; and (d) supporting students' learning outside the classroom.

Candidates for promotion are evaluated on teaching effectiveness at the time of each review. Candidates for tenure must be deemed effective teachers. Evidence concerning the quality of teaching will be obtained from several sources. Course materials will be evaluated by senior faculty and reviewers for the quality of the pedagogical insights they offer. Multiple classroom observations will be conducted over time by an appropriate set of senior faculty to provide an informed assessment of classroom effectiveness. Senior colleagues will be asked to provide evidence of the candidate's contributions to teaching groups and to supporting other teachers at HBS. Evidence regarding a candidate's contributions to students' learning environment may also be sought.

### **EFFECTIVE CONTRIBUTIONS TO THE HBS COMMUNITY**

13. All members of the HBS faculty are expected to contribute actively to the HBS community and help foster an environment conducive to the work of others. Given the School's mission and scope, we are particularly interested in promoting faculty with the potential to lead and run the School. Thus, evaluation of all candidates will explicitly include evidence of how the candidate has helped to build and maintain a high-quality environment for teaching, learning, and working at the School, and how strong his or her prospects are for continued contribution and leadership.

All recommendations for promotion, therefore, must be supported by persuasive evidence that the following requirements are met:

- (a) The candidate displays honesty, integrity, and respect for others, including faculty, students, and staff.
- (b) The candidate accepts his or her fair share of the School's administrative, mentoring, and teaching responsibilities.
- (c) The candidate contributes to the teaching and research environment of the School.
- (d) The candidate advances the School's mission and those activities that support and foster it.

Evidence of these attributes will be obtained from those who are the most familiar with both the candidate and the various responsibilities that he or she has undertaken during his or her time at HBS. While these contributions are described in the context of the School, we will also consider additional contributions made to other parts of Harvard University and to broader professional communities.

### **STANDARDS FOR EXTERNAL TENURE APPOINTMENTS**

14. From time to time, the School will recruit professors from other academic institutions to join our tenured ranks. Experience suggests that candidates make the greatest contribution to HBS when they combine great research skills with a deep interest in the practice of management and an integrative and expansive view of the many facets of managerial practice. Yet, often, candidates come from institutions that do not emphasize field work or managerial relevance. In these cases, therefore, in addition to considering records of scholarly productivity and impact, the Appointments Committee will evaluate the candidates' interests and engagement in the practice of management, their teaching effectiveness, their contributions to their institution, and their plans to advance the mission of the School. The Appointments Committee should also gather evidence on the candidates' breadths of interest in disciplines beyond their own. Although we will take into account the different backgrounds of these candidates, there is a clear expectation that they can meet all standards for tenure.

## PART I.B: STANDARDS FOR REVIEWS PRIOR TO TENURE

15. The first faculty appointment for individuals is usually as an Assistant Professor. An initial appointment to this rank is normally for a term of three years. This appointment can be renewed for another two years at the conclusion of the initial three-year term. The next appointment level is as an Associate Professor without tenure. This appointment is normally for a term of four years. While faculty members are typically reviewed during the last year of their appointments, candidates with strong records may be reviewed earlier.
16. For renewal of the appointment of an Assistant Professor at the conclusion of the initial three-year term, the Dean will ordinarily rely on the recommendations of the senior faculty who are most informed about the candidate's work. It is expected that a majority of Assistant Professors will be renewed at this stage. However, individuals will not be renewed when they are unlikely to meet the standards for promotion to Associate Professor.
17. For appointments to the rank of Associate Professor, the review of the candidate's work will include an evaluation of his or her research, course development, teaching effectiveness, and contributions to the community. The candidate is required to provide persuasive evidence that there is a realistic expectation that, by the end of his or her appointment as Associate Professor, all of the conditions for a tenured appointment can be met. In particular, the factors below provide evidence whether this criterion has been satisfied:
  - (a) The candidate has produced high-quality work and will continue to be productive.
  - (b) The candidate has made significant intellectual progress beyond the work done for his or her doctoral studies.
  - (c) The candidate has communicated his or her work to internal and external constituencies.
  - (d) The candidate has undertaken field work designed to understand problems of practice.
  - (e) The candidate has produced effective teaching materials with associated teaching notes. Typically, the requirements under (d) and (e) are met by candidates writing *field-based* cases and associated teaching notes.
  - (f) The candidate's intellectual interests are moving in a direction that will eventually enable him or her to make a significant contribution to the mission of the School.

Occasionally, we hire as Assistant Professors individuals who have held the equivalent rank at another institution before joining our faculty. These individuals may spend less time on the HBS faculty than the typical term before coming up for review for promotion to Associate Professor. In applying the standards for review, we will take into consideration time spent on the HBS faculty as well as at other schools.

18. Untenured faculty members hired as Associate Professors will typically be reviewed by the Appointments Committee in an "interim" review approximately one or two years prior to their scheduled tenure review. The purpose of these reviews is to provide useful feedback to the candidates as they prepare for their imminent tenure review. Typically testimonials are solicited primarily from internal reviewers. There is no formal vote of the Appointments Committee in these cases.



## **PART I.C: STANDARDS FOR APPOINTMENT TO PROFESSOR OF MANAGEMENT PRACTICE**

19. Given the School's mission to educate leaders who make a difference in the world, not all of our needs can be met through the traditional academic hiring process. To enhance our understanding of management practice, we must include in our faculty outstanding individuals with deep experience in management. These faculty members – Professors of Management Practice – do not serve on the Appointments Committee, but in all other respects, function as full members of the senior faculty, complementing our tenured faculty. Our standards for these appointments and processes for their review are given in Sections 20 and 21.
20. The Professor of Management Practice is a term appointment designed to attract to our faculty a small number of outstanding people from practice. Candidates for Professor of Management Practice are expected to bring skills, experiences, and perspectives that are not usually cultivated through traditional tenure-track academic careers. As members of our faculty, they are expected to assume teaching and leadership positions that contribute to the School's mission and in which they will disseminate their practical insights, experiences, and perspectives through mentoring or other forms of collaboration with faculty and students, and through various forms of written output.

The initial appointment as Professor of Management Practice shall be for no more than four years, and may be made at the discretion of the Dean without involvement of the full Appointments Committee subsequent to receiving advice from faculty with knowledge of the candidate's characteristics and potential role at the School, as described in Section 20(a) below. As a means of gauging a candidate's fit with HBS, individuals will typically, but not always, join the HBS faculty as a Senior Lecturer for a period of time before being considered as a candidate for Professor of Management Practice. Although someone who is expected eventually to become a candidate for Professor of Management Practice might first be appointed Senior Lecturer, a Senior Lecturer appointment does not by itself automatically entitle a candidate for later consideration as a Professor of Management Practice. Likewise, longevity and excellent performance as a Senior Lecturer are not substitutes for the qualifications for initial appointment as a Professor of Management Practice described in Section 20(a) below. Ordinarily, unless the Dean grants an exception, candidates for Professor of Management Practice who are first appointed Senior Lecturer must be formally considered for initial appointment as Professor of Management Practice within three years of joining the faculty.

Following their initial four-year appointment, Professors of Management Practice may be reappointed for a period of up to six years following a formal review by a subcommittee of the Appointments Committee, a discussion by the full Appointments Committee, and approval by the Dean, as outlined in Section 20(b) below. Under some circumstances, the Dean may choose to consider extending Professor of Management Practice appointments beyond the maximum cumulative ten-year period of the first two appointments. Thus, during the term appointment following the review by the full Appointments Committee, and at the discretion of the Dean, the individual may be reviewed for an additional term not to exceed five years, following the procedures described in Sections 20(b) and (c) below.

In some circumstances following the initial maximum ten-year cumulative term as Professor of Management Practice, or a subsequent five-year reappointment as described in the preceding paragraph, short-term reappointments of up to three years in total may be appropriate. In such cases, the Dean has discretion to reappoint the individual for up to three additional years without a formal review. The maximum cumulative time-period that an individual may be appointed as Professor of Management Practice is 18 years.

(a) Initial appointment

Candidates for an initial appointment as Professor of Management Practice should have: 1) a record of significant management experience and accomplishment as a senior organizational leader; 2) a reputation for honesty, integrity, personal accountability, and respect for others; 3) an appreciation for intellectual inquiry; 4) an affinity for discussion-based learning and the HBS teaching model (as described above in Section 12); and 5) an agenda of activities for the period of the initial appointment that both advances HBS's mission and meets the needs of the host unit, and that includes active mentoring or other forms of collaboration with faculty and students, as well as plans for written output.

To obtain counsel on a candidate's initial appointment, the Dean will typically appoint a subcommittee consisting of three Appointments Committee members and the Senior Associate Dean responsible for faculty recruiting as a non-voting ex-officio member, to collect information on the candidate and make a recommendation to the Dean.

The subcommittee counseling the Dean on a candidate's initial appointment as Professor of Management Practice will gather and consider evidence of the individual's:

- (i) Principal accomplishments as a manager and senior organizational leader. Former rank and professional prominence will ordinarily be strongly indicative of a candidate's accomplishments in this role. However, significance of accomplishment will be judged primarily on the basis of the candidate's record of outstanding innovation, impact, or vision at the organizations they helped lead.
- (ii) Reputation for honesty, integrity, personal accountability, and respect for others.
- (iii) Capacity for rigorous reasoning, the creative framing of problems, collaborative inquiry, constructive debate, and/or the synthesis of ideas.
- (iv) Likely or observed effectiveness as a teacher.
- (v) Planned activities and expected contributions to HBS's teaching, learning, and research environment during a first appointment.

(b) First reappointment

The reappointment of a Professor of Management Practice is subject to a formal review conducted by a subcommittee appointed by the Dean consisting of Appointments Committee members from outside the candidate's unit and the Senior Associate Dean responsible for faculty development as a non-voting ex-officio member. The report of the subcommittee is presented to the full Appointments Committee for discussion and recommendation to the Dean.

The review for a candidate's reappointment as Professor of Management Practice focuses on the faculty member's effectiveness in carrying out the mission of the School as demonstrated during the prior appointment and planned for the period of the reappointment. Candidates for re-appointment as Professor of Management Practice should have: 1) produced output – typically in the form of course materials, articles, or books – that captures valuable insights relevant to practice; 2) made effective teaching contributions as described in Section 12

above; 3) a demonstrated record of actively and effectively disseminating their skills, experiences, and perspectives with faculty and students through mentoring or other forms of collaboration; 4) displayed honesty, integrity, personal accountability, and respect for others, including faculty, students, and staff; and 5) a clear and feasible set of plans that continue to be aligned with the mission of the School; the needs of the host unit; and the School's expectations for mentoring, on-going collaboration, and the dissemination of practical experience.

The written output of Professors of Management Practice being considered for reappointment will not be judged by the standards for outstanding intellectual contributions normally applied to candidates for promotion to Professor of Business Administration, as described in Sections 7 through 11. In particular, Professors of Management Practice are not expected to produce work that is tightly linked to scholarly literature, meets scholarly standards of theoretical or empirical rigor, creates new theoretical models or frameworks, or is published in peer-reviewed journals. Instead, the written output of Professors of Management Practice being considered for reappointment will be evaluated for excellence on the following dimensions: 1) its focus on important problems relevant to management; 2) the care, diligence and logical consistency with which the work was executed; 3) its ability to elucidate useful business concepts or illuminate important business phenomena in ways that facilitate teaching and learning or result in sound prescriptive guidance to managers; and 4) the extent to which it is a compelling and coherent body of work.

Although evidence for this review may be primarily internal, the subcommittee will obtain relevant outside evaluations whenever possible, particularly in those instances in which managers or other practitioners are in a strong position to assess the PMP candidate's work. The subcommittee will consider evidence of:

(i) The candidate's record of accomplishment over his or her previous term, including effectiveness in the classroom, collegueship, and mentoring or other forms of collaboration; the development of course and/or research materials; and other contributions to the School's environment and mission;

(ii) The candidate's reputation for honesty, integrity, personal accountability and respect for others, including faculty, students and staff, during his or her initial term.

(iii) A clearly articulated, feasible plan appropriate for the individual's next term of appointment; and

(iv) The likelihood of continued productivity in areas consistent with the individual's planned role at the School.

(c) Second reappointment at the discretion of the Dean

Reappointment as Professor of Management Practice following the maximum cumulative ten-year period of the first two appointments may, at the discretion of the Dean, take place pursuant to a second formal review. For this review, the Dean will appoint a subcommittee consisting of Appointments Committee members from outside the candidate's unit and the Senior Associate Dean responsible for faculty development as a non-voting ex officio member to formally evaluate the candidate based on the standards outlined above (see Section 20(b) for Professor of Management Practice reappointments).

In some instances, a PMP being considered for a second reappointment will have taken on major administrative responsibilities at the School's request during his or her previous term appointment that preclude meeting all the standards specified in Section 20(b). In such cases, the subcommittee conducting the review will explicitly consider the candidate's contribution to the School's mission through such administrative responsibilities. Specifically, it will take into account the time that the candidate has devoted to administrative activities in lieu of written output, teaching contributions, and mentoring and collaborative activities.

At the end of the subcommittee's review process, a written report will be made available to members of the Appointments Committee to allow them the opportunity to provide written comments to the Dean. The Dean will inform the Appointments Committee of his or her decision about reappointment at a subsequent Appointments Committee meeting.

## **PART II PROCEDURES**

21. All appointments are made by the President and Fellows of Harvard College, referred to as the Corporation.

Appointments for periods of more than one year must also have the approval of the Board of Overseers. Recommendations for Corporation appointments are the responsibility of the President, who, in turn, receives recommendations from the Dean, who makes use of faculty information, judgment, and advice. Because the Dean has the sole responsibility for the recommendations made to the President, the Dean may initiate or approve variances from these procedures when, in his or her judgment, the circumstances of a particular case warrant it or are in the best interests of the School.

22. The primary objective of the appointments process is to provide the Dean with the best possible information, judgment, and advice on various faculty appointments. The process must strive to consider simultaneously the interests of individual candidates and the interests of HBS. It must also satisfy the President and relevant governing bodies of Harvard University. It is important to recognize the vital role of the appointments process in shaping the strategy and shared values of HBS. The appointments process—for any individual case and cumulatively across cases—provides the tenured faculty with the opportunity to continuously reexamine, renew, and revitalize the distinctive mission of the School, which fundamentally depends on the composition of its faculty. The appointments process also serves an important integrative role in the School. It helps the senior faculty learn about individuals in different parts of the School and the work they are doing, promotes connections across these parts, and builds the coherence that the School needs to fulfill its mission.
23. The Appointments Committee, consisting of all tenured Professors and formerly tenured Baker Foundation Professors still fully engaged at the School, advises the Dean on all appointments that require a formal review. Input from Professors with senior-term appointments (Professors of Management Practice and other Baker Foundation Professors) may also be solicited in the form of review letters.

24. Membership in the Appointments Committee is a privilege with attendant responsibilities. These include: serving on ad-hoc subcommittees, writing review letters and reports, reading reports in advance, and regular attendance at meetings. The deliberations of the Appointments Committee are highly confidential. Its usefulness would be destroyed if reports of its deliberations were communicated to anyone outside the Committee. Members who fail to fulfill the responsibilities of serving on the Appointments Committee or fail to abide by this requirement of confidentiality can be asked by the Dean to withdraw from the Committee.
25. All initial untenured appointments are made by the Dean without the involvement of the Appointments Committee. In generating the pool of candidates for faculty appointments, the Dean relies on a thorough internal and external search conducted by the individual units and interest groups and coordinated by the Senior Associate Dean responsible for faculty recruiting. Sometimes a special group is formed to search for candidates in fields in which the School is not already established. The School is committed to a search process that includes a special effort to identify qualified women and minority candidates and to an appointments process based solely on merit.
26. For other appointments and promotions, an ad-hoc subcommittee will be constituted for the purpose of assessing whether a candidate meets the standards detailed above. Its recommendation is reviewed by the full Appointments Committee, which, in turn, makes a recommendation to the Dean. These ad-hoc subcommittees will normally consist of three members of the Appointments Committee, composed of and chaired by members outside the candidate's unit. The Senior Associate Dean responsible for faculty development will be a non-voting ex-officio member.
27. It is the subcommittees' responsibility to choose the appropriate set of internal and external reviewers to evaluate candidates. When a candidate's work falls outside of a well-defined reference group, the subcommittees will solicit viewpoints of several audiences within and outside HBS to judge the entire body of work. Special care should be exercised in identifying reviewers from outside HBS who can competently evaluate contributions aimed at educators and practitioners. Subcommittees should also solicit letters from reviewers within the School who have first-hand knowledge of the candidate's teaching or contributions to the community. Even though subcommittees may solicit letters from only a chosen set of the School's faculty, any senior faculty member has the right to write a letter on any candidate being reviewed.
28. Individuals holding an appointment at the School who are being considered for promotion will be told in advance by the Senior Associate Dean responsible for faculty development that a subcommittee will evaluate them. All candidates will submit a personal statement and curriculum vitae; a portfolio of their completed work; a calculation of their total years of service as determined by the School's relevant policies; and other information as requested by the Senior Associate Dean. Candidates will be given the opportunity to inform the subcommittee of: (1) work they consider to be particularly significant; (2) the names of people who they think can best evaluate their work; (3) the names of any tenured professors or other senior faculty members who they believe could not impartially evaluate their work; and (4) their interests and plans, including the types of assignments that they think will make the greatest contributions to their development. The subcommittee is not bound by these requests and will develop its own list of internal and external reviewers and materials to circulate for review. Candidates may communicate with the subcommittee through the Dean, Senior Associate Dean responsible for faculty development, or their unit head(s).

29. Extensions of untenured appointments may be made at the discretion of the Dean when justified by circumstances such as illness or other extraordinary situations. In certain cases, extensions may also be granted to give candidates time to complete planned work. In these cases, the Dean will grant extensions only after careful consideration of the candidate's work and plans indicates: (1) that completion of the work-in-progress is likely to provide significant new evidence about the qualities and prospects of the candidate and (2) that there is a reasonable likelihood that the work will lead to success at the next review.
30. The normal process by which the faculty advises the Dean on appointments is as follows:
  - (a) In a series of meetings, subcommittees review the materials submitted by the candidate. They solicit input from the candidate's unit to get an overview of the case and develop a list of appropriate reviewers. In the case of a tenured appointment, the subcommittee will also consult an expert from outside the School to develop a better understanding of the candidate's field and to identify reviewers. The final list of reviewers and materials to be sent for review is determined solely by the subcommittees. Based on their evaluation of the letters received and their own reading of the candidate's materials, subcommittees will prepare a report with a recommendation for the full Appointments Committee. The subcommittees' recommendations will be based on a vote of its members. Upon initial review of the case, subcommittees may recommend to the Dean that the candidate needs an extension before his or her case can be reviewed with a reasonable prospect for success, or that the case is simply too weak and that the candidate should be encouraged to withdraw from consideration. The decision on whether to proceed with the review, extend the candidate's appointment, or ask the candidate to withdraw rests with the Dean. If the subcommittee arrives at a negative recommendation after it solicits letters from reviewers and finishes reviewing the case, the candidate will be informed by the Senior Associate Dean, responsible for faculty development or the Dean. At that time, he or she will be given an opportunity to withdraw from the process before his or her case is discussed by the full Appointments Committee. The candidate retains the right to ask that his or her subcommittee's report and recommendation be discussed by the full Appointments Committee before the Dean makes a final decision.
  - (b) At a series of meetings convened for the purpose, the report and recommendations of the subcommittee on each candidate being reviewed will be discussed by the full Appointments Committee. At the completion of each discussion, the Dean will ascertain the view of the Appointments Committee, requesting, if needed, an initial vote by signed and confidential ballot to accept, reject, abstain, or modify the recommendation of the subcommittee. Written comments are also solicited by the Dean from members of the Appointments Committee at this stage. The outcome of that vote is not announced to the Appointments Committee at this time. When the series of reviews on individual candidates is completed, the Dean may request a further review of a subset of the candidates for comparative purposes, and another ballot may be requested. The results of all these votes are also confidential. All evidence, recommendations, views, and votes are taken into account by the Dean in making decisions or recommendations to the President. Upon completion of this process, the Dean holds a final meeting with the Appointments Committee, at which time the Appointments Committee is informed of the decisions and recommendations made by the Dean to the President and the reasons therefore, including the results of advisory votes. It is the exclusive responsibility of the Dean to disclose his or her recommendations to the individual candidates.

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# **EXHIBIT 2**

## Principles and Procedures for Responding to Matters of Faculty Conduct

The Harvard Business School community aspires to be a model of leadership, honor, and integrity. Toward this end, we have adopted various principles and policies to guide our conduct. The most comprehensive is our statement of Community Values. This document defines a set of principles that all stakeholders of the School—students, program participants, faculty, staff, and alumni—accept and agree to abide by when they join the HBS community. These principles, also referred to as our Community Standards, are the following:

- Respect for the rights, differences, and dignity of others
- Honesty and integrity in dealing with all members of the community
- Accountability for personal behavior

Other policies and guidelines—some of which are faculty-specific, others of which are HBS-wide or Harvard-wide—cover a broad range of topics and activities such as the use of human subjects, intellectual property, conflict of interest, use of Harvard name, and non-retaliation.<sup>1</sup> Adhering to these policies and guidelines is the responsibility of each and every faculty member.

Faculty members at HBS are also expected to contribute actively to the HBS community, to help foster an environment conducive to the work of others, and to advance the School's mission and the activities that support and foster it.<sup>2</sup> Faculty members at HBS thus bear a responsibility to adhere to the highest standards of collegiality and conduct, understanding that activities or behaviors that undermine the academic environment or damage the standing of Harvard have a wide-ranging impact.

From time to time, concerns about the behavior of an individual faculty member may be raised. It is expected that many, if not the majority, of these concerns can be resolved informally among the individuals involved, or locally (e.g., within a department or unit). There are resources available to help in these situations, depending on the nature of the issue at hand, and support may be sought from staff in the Division of Research and Faculty Development, Human Resources, and the Office of the Dean, as well as from faculty colleagues.

In some instances, however—for example, instances of *egregious* behavior or actions, or incidents that indicate a *persistent and pervasive pattern* of problematic conduct—a more structured procedure may be needed to investigate the concern and determine whether misconduct has occurred.<sup>3</sup> Here, the Dean may choose to refer the allegation to a Faculty Review Board (FRB).

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<sup>1</sup> See, for example, [General](#) and [Research Policies](#) for HBS faculty members and Harvard University [Policies](#).

<sup>2</sup> Consistent with the School's *Policies and Procedures with Respect to Faculty Appointments and Promotions* (revised Spring 2013), pages 6 and 9.

<sup>3</sup> Allegations of research misconduct or violations of sexual and gender-based harassment policies are covered, respectively, by the [Research Integrity Policy](#) and the [Harvard University Sexual and Gender-Based Harassment Policy](#).



## Faculty Review Board Procedure

In situations where a more structured procedure may be needed to investigate a concern and determine whether misconduct has occurred, as noted, the Dean may refer an allegation to the Faculty Review Board.<sup>4</sup> The FRB typically will comprise a faculty chair, two additional faculty members, and a senior staff member, all appointed by the Dean. The FRB Procedure includes:

- A summary of the allegation, as it is known at the time, will be written by the Chair of the FRB.
- The FRB, aided in some instances by a fact finder, will investigate the allegation. The investigation may require factual inquiry, interviews, and the review of materials (e.g., documents, email exchanges, social media).
- The FRB will prepare a draft report that should include the evidence gathered; comments on the seriousness of the offense, including the FRB's conclusions on whether misconduct has occurred; and potential recommendations for redress or remediation of the incident or behavior, including possible sanctions.<sup>5</sup>

The faculty member and, if applicable and appropriate, the person making the allegation will have an opportunity to review the allegation, the evidence gathered, and the draft report, and to respond in writing. Additionally, both parties can designate a member of the community as an advisor—someone to accompany them to any meetings or interviews, for example, or review written materials. These individuals may not be family members, subordinates, or attorneys, though both parties can consult with any of these individuals at any time. Advisors are expected to respect the confidentiality of the process.

While the work and activities of the FRB are considered private, the FRB may, in the course of its proceedings, need to inform or solicit input from others—including faculty members (e.g., colleagues or a Unit Head), staff members (e.g., in Human Resources), other Harvard offices (e.g., the General Counsel), students, and alumni.

The report, including recommendations, will be considered final once the FRB has reviewed written responses and once modifications and edits, if the FRB deems them appropriate or necessary, have been made. Once the report is finalized, it will be submitted to the Office of the Dean, along with any responses (to the allegation and to the report) that have been received.

The Dean is responsible for finalizing any sanctions. The Office of the Dean is responsible for implementing any recommendations and sanctions and will maintain records of the proceedings.

The FRB procedure is designed to be flexible, recognizing the need to weigh multiple factors such as the nature and seriousness of the conduct in question, the supporting evidence, and any

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<sup>4</sup> These may include concerns where the evidence is unclear or conflicting, where complexity is a factor, or where the allegation or its impact is deemed serious—for example, the ongoing violation of policies or guidelines, physical violence or the threat of physical violence, or repeated disrespectful behavior or abuse of authority.

<sup>5</sup> See the section on "Notes on Promotions, Reviews, and Reappointments" for a fuller description of how conduct will be assessed when faculty members are under review by an Appointments Subcommittee or Standing Committee.

mitigating factors and circumstances. At the same time, the FRB procedure aims to provide a framework to allow an appropriate resolution of concerns in a wide variety of circumstances.

The following principles and considerations shall guide those carrying out the FRB procedure:

- Every reasonable effort should be made to protect the reputations of the individuals involved.
- The faculty member being reviewed by the FRB and the individual raising the concern should be kept informed throughout about the steps of the process and the anticipated time line.
- Privacy and confidentiality are important considerations; information generally should be shared only on a need-to-know basis, and consistent with what is practicable.
- Allegations should be articulated in writing and evidence presented clearly.
- Recognizing that it can be difficult to anticipate every circumstance that may arise, the individuals responsible for administering the FRB procedure will use their best efforts and judgment.

### **Notes on Promotions, Reviews, and Reappointments**

- The Senior Associate Dean for Faculty Development will meet annually or as otherwise needed with the Chair of the FRB and the Executive Dean for Administration to discuss whether concerns about conduct have been raised for upcoming candidates for promotion, review, and reappointment.
- In this meeting, the FRB Chair and Executive Dean would report on any earlier complaints raised against the candidate and the outcome of local resolution or the FRB investigation. In addition, the FRB and Executive Dean may seek and report on confidential input—from faculty colleagues, staff, students, alumni, or others—about concerns about the candidates that were not previously reported.
- If no serious questions about conduct are raised, the promotion, review, and reappointment case will proceed to the Subcommittee or Standing Committee. For cases where previous or current conduct raises a question of whether the candidate meets the School's criteria for "Effective Contributions to the HBS Community," the FRB will be asked to undertake a review, beginning with drafting an allegation as outlined above. In these cases, the Subcommittee or Standing Committee will begin its work evaluating the candidate on the criteria *excluding* collegueship and adherence to Community Values.
- The FRB's conclusions on whether a candidate has upheld the School's Community Values will be provided to the Appointments Subcommittee or Standing Committee, and included with that group's report to the full Appointments Committee. In these cases, the Subcommittee or Standing Committee will prepare its report and recommendation, including its vote, based on the criteria *excluding* collegueship and adherence to Community Values.

### **Additional Notes**

Concerns about faculty conduct may be brought forward by individuals or by groups of individuals, and concerns may arise from individuals within HBS, from within Harvard, or from

outside (e.g., from people unaffiliated with Harvard). Generally, individuals should raise their concerns with whomever they feel most comfortable speaking. Members of the community designated to receive concerns about conduct include:

Jean Cunningham  
Office of the Dean  
5.6216 | jcunningham@hbs.edu

Ellen Mahoney  
Office of Human Resources  
5.6758 | emahoney@hbs.edu

Valerie Porciello  
Division of Research and Faculty Development  
5.6116 | vporciello@hbs.edu

This policy, once adopted, should be reviewed and revised as needed a year after implementation, and no less frequently than every three years thereafter.

*Last revised 28 April 2015*

# **EXHIBIT 3**

# Community Values

At Harvard Business School we believe that leadership and values are inseparable. The teaching of ethics here is explicit, not implicit, and our community values of mutual respect, honesty and integrity, and personal accountability support the HBS learning environment and are at the heart of a School-wide aspiration: to make HBS a model of the highest standards essential to responsible leadership in the modern business world. Our values are a set of guiding principles for all that we do wherever we are and with everyone we meet.

“Our whole pedagogy is dependent on the notion that this is a collective endeavor and that we can't really accomplish our mission without relying on each other.”

PROFESSOR ROBIN ELY

## Curriculum

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As early as the School's founding in 1908, the issue of how to instruct students in business ethics has been explored by the faculty. Since that time, ethics has been an integral part of the curriculum, sometimes as a separate required course, but always as a key component of classes such as human resource management, corporate finance, and others.

The curriculum today includes a wide range of courses that deal with the issues of ethics and leadership. For example, Leadership and Corporate Accountability is an interdisciplinary course that draws on economics, law, psychology, and organizational behavior to help prepare students for the challenges of leadership in a changing global society. Leadership and Organizational Behavior focuses on how managers become effective leaders by addressing the human side of enterprise. Additionally, more than 500 cases developed by HBS faculty explicitly address ethical concerns.

## Our Community Values

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The mission of Harvard Business School is to educate leaders who make a difference in the world. Achieving this mission requires an environment of trust and mutual respect, free expression and inquiry, and a commitment to truth, excellence, and lifelong learning.

Students, program participants, faculty, staff, and alumni accept these principles when they join this community. In doing so, they agree to abide by the following Community Values:

Respect for the rights, differences, and dignity of others

Honesty and integrity in dealing with all members of the community

Accountability for personal behavior

HBS can and should be a living model of these values. To this end, community members have a personal responsibility to integrate these values into every aspect of their experience here. Through our personal commitment to these values, we can create an environment in which all can achieve their full potential.

# **EXHIBIT 4**



## HARVARD | BUSINESS | SCHOOL

PAUL M. HEALY |  
JAMES R. WILLISTON PROFESSOR OF BUSINESS ADMINISTRATION  
SENIOR ASSOCIATE DEAN FOR FACULTY DEVELOPMENT

16 July 2015

Benjamin G. Edelman  
Baker Library | Bloomberg Center 445

PERSONAL AND CONFIDENTIAL

*via secure file transfer to bedelman@hbs.edu*

Dear Ben,

As you know, promotion decisions at Harvard Business School are evaluated on multiple dimensions. Our focus is not solely on intellectual contributions, although those are of vital importance. We also expect that candidates will help foster a healthy and constructive academic community by, for example, displaying respect for others and contributing to the teaching and research environment of the School. These are among the expectations outlined in the *Policies and Procedures with Respect to Faculty Appointments and Promotions* under the heading, "Effective Contributions to the HBS Community."

As we have begun our work on your promotion case, concerns about your conduct—and about your ability to meet this standard—have been raised.

The *Principles and Procedures for Responding to Matters of Faculty Conduct* (attached for your reference) offer guidance about how the School should consider conduct-related issues in the context of a promotion decision. The Faculty Review Board, comprising three faculty members and a senior administrator, is responsible for undertaking a review of cases raising "a question of whether the candidate meets the School's criteria for 'Effective Contributions to the HBS Community.'"

As outlined in the *Principles and Procedures*, I have referred this aspect of your case to the Faculty Review Board, which will be responsible for drafting and providing you with a summary of the concerns ("the allegation, as it is known at the time").

You'll next hear from Amy Edmondson, the chair of the FRB; in the interim, she and I are available to respond to any questions you might have.

Best regards,

Paul M. Healy