

COMMONWEALTH OF MASSACHUSETTS

Superior Court

Suffolk, SS
Business Litigation Session

BENJAMIN EDELMAN,

Plaintiff,

v.

PRESIDENT AND FELLOWS OF
HARVARD COLLEGE,

Defendant.

Civil Action 2384CV00395-BLS2

**CONSOLIDATED STATEMENT OF FACTS FOR PLAINTIFF'S
CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT¹**

1. Plaintiff Benjamin Edelman was a candidate for tenure at the Harvard Business School (“HBS”) in 2015. (JA-1039, JA-1071.) **R: Admitted.**²

HBS Tenure Process

2. HBS evaluates candidates for tenure based on three standards: “A. Intellectual contributions B. Teaching contributions C. Contributions to the HBS community.” (JA-118, 262-274.) **R: Admitted.**

3. At HBS, as of 2015, a tenure case proceeds as follows. First, a subcommittee reviews whether a candidate meets the School’s standards for tenure. (JA-273.) **R: Admitted.** Next, a Standing Committee, consisting of members of that year’s subcommittees, evaluates the subcommittee report. (JA-119.) **R: Admitted.** Then the Appointments Committee (“AC”),

¹ Defendant Harvard responds to each sentence, individually, at its end and in **bold text** [“**R:...**”].

² All references to “Admit” or “Admitted” are admitted for summary judgment purposes only. Sup. Ct. R. 9A(b)(5)(iii)(A).

consisting of all tenured professors and formerly tenured professors fully engaged at the School, advises the Dean on tenure appointments, through a vote on each candidate, which the Dean considers in making recommendations. (JA-214, 272-274.) **R: Denied as to formerly tenured professors serving on the AC; otherwise Admitted. (JA-1074-1075)** The HBS Dean has sole responsibility for tenure recommendations to Harvard's President. (JA-272.) **R: Admitted.** During Dean Nohria's tenure, Harvard's President always accepted his tenure recommendations. (JA-238.) **R: Admitted.**

4. In spring 2015, HBS enacted Principles and Procedures for Responding to Matters of Faculty Conduct (the "P&P"). (JA-124, 257-261, 366-369.) **R: Admitted.** The P&P established a Faculty Review Board ("FRB") to review alleged misconduct by HBS faculty, including tenure candidates. *Id.* **R: Admitted that one purpose of the FRB was to review alleged misconduct.** The FRB was designed to evaluate compliance with HBS Community Values. (JA-147.) **R: Admitted that one purpose of the FRB was to evaluate compliance with HBS Community Values.** HBS sent the proposed policy to faculty and presented it at a faculty meeting. (JA-123, 257-261, JA-598-606) **R: Admitted.** Faculty supported the proposal, and HBS Dean Nitin Nohria approved it. (JA-211-212-.) **R: Admitted.**

5. The P&P was created with the awareness and intention that it would be used to review Plaintiff. (JA-125, 220-222, 750-752). **R: Admitted that HBS was aware the FRB Principles would be used to review Plaintiff, otherwise Denied. (JA-220-221.)** In a meeting about what became the FRB, the first-stated "objective" was to "respond to the Ben Edelman situation in particular." (JA-192, 753.) **R: Admitted that the notes state this, among other things.** Describing what became the FRB, Dean Cunningham wrote that she spoke with Dean Nohria about "launching a review process for Ben." (JA-191, 750-752.) **R: Admitted.** When the P&P

was presented, Plaintiff understood that it would apply to him. **R: Admitted.** He reviewed it carefully and was reassured by its procedural provisions, which he thought were fair. (JA-67.)

R: Admitted that Plaintiff testified as such.

2015 FRB

6. The Faculty Review Board in 2015 issued a draft report concluding that Plaintiff had not met HBS's standards for Effective Contributions to the Community and had not upheld HBS Community Values, in three instances: a widely publicized dispute with the Sichuan Garden restaurant; a lack of detail in the disclosure statement accompanying a blog post that caused the stock of the company Blinkx to fall; and dealings with HBS staff including a dispute about changing the projectors in HBS classrooms. (JA-155, 275-362.) **R: Admitted.**

7. In 2015, the members of the FRB were Professor Amy Edmondson (chair); Angela Crispi, the HBS Executive Dean for Administration; Professor Forest Reinhardt; and Professor Leonard Schlesinger. **R: Admitted.** Associate Dean Jean Cunningham provided administrative support. (JA-3-4, 95.) **R: Admitted.**

Two-year Extension

8. In 2015, the Standing Committee recommended extending Plaintiff's appointment at HBS for two years and revisiting his tenure candidacy then. (JA-127.) **R: Admitted.**

9. HBS Dean Nitin Nohria agreed to extend Plaintiff's appointment for two years and revisit his tenure candidacy in 2017. (JA-129-130, 229, 680.) **R: Admitted.**

10. HBS leaders asked Plaintiff to teach a new course, join a new teaching group, move his office to join that group and leave his own unit, and join the Academic Technology Steering Committee ("ATSC"). (JA-15, 99-101, 128, 164-165, 224, 229-230, 478, 609-610, 678, 781.)

R: Admitted that these were among the things Plaintiff was asked to do; otherwise Denied.
(JA-224, 229-230, 478, 781.)

11. Plaintiff was told that he would have to demonstrate that he learned from the FRB's 2015 report, and that the assigned activities were to help him make that demonstration. (JA-129.)

R: Admitted.

12. Plaintiff took those steps and received positive feedback on each. (JA-493-499, 1243.)

R: Denied that he took all the recommended steps (JA-166-167.) and only received positive feedback (JA-493, 547.); otherwise Admitted.

13. FRB members and HBS leaders could not articulate other ways in which Plaintiff could have demonstrated changed behavior. (JA-101, 128, 224-225, 234.) **R: Harvard responds that what FRB members, HBS leaders, or Plaintiff "could" do is not a factual assertion to which an admission or denial can be given; to the extent such a response is required, Denied. (JA-281-282, 284.)**

Reopening case in 2017

14. HBS convened the FRB to evaluate in 2017 Plaintiff without first holding a meeting between the Senior Associate Dean for Faculty Development, the FRB Chair, and the Executive Dean for Administration (JA-2, 16, 17, 126, 160, 161) as required by the P&P (JA-368.)

R: Denied that the FRB Principles required the meeting, otherwise Admitted. (JA-368.)

15. No new questions were raised about Plaintiff's conduct or contributions to the HBS Community between 2015 and 2017, nor was he accused of misconduct in that period. (JA-17, JA-17, 130, 200.) **R: Denied. (JA-530-531, 546-547, 951.)**

16. In earlier drafts of the P&P, Harvard considered having the draft report include only "a summary of the evidence gathered" and granting the faculty member the "opportunity to review materials." (JA-756.) **R: Admitted that earlier drafts of the FRB Principles were different from the final version; otherwise Denied as to any implication of the meaning of these terms. (Compare JA-756-765 with JA-366-369.)** The final version instead guaranteed the

faculty member the right to review “the evidence gathered” without qualification. (JA-193, 367.)

R: Denied that there were no qualifications; otherwise Admitted. (JA-208-209, 368, 492.)

17. The 2017 FRB did not write a summary of an allegation or provide Plaintiff an allegation or summary of an allegation. (JA-15, 18, 476-77.) **R: Denied. (JA-18, 113, 114, 130, 682-683.)**

18. In preparation for the 2017 FRB process, Dean Healy asked Plaintiff to write a statement to the FRB about what he learned from the 2015 FRB. (JA-80, 130-131, 575-576, 681-683.)

R: Admitted. Plaintiff did so, and provided the FRB with lists of possible witnesses. (JA-103-104, 180, 476-477, 734-738.) **R: Admitted.**

19. In lieu of an allegation, the FRB informed Plaintiff that it would “assess” “whether you understand the aspects of your conduct—regardless of your intent—that made them problematic”; “whether there is sufficient evidence of changed behavior”; and “whether there is a reasonable expectation that your changed behavior will be sustained in the future.” (JA-18, 200, 476- 477.) **R: Denied. (JA-18, 113, 114, 130, 682-683.)**

20. The 2017 FRB membership was the same as 2015, except that Professor Stuart Gilson replaced Professor Reinhardt. (JA-103.) **R: Denied that there was a separate 2017 FRB; otherwise Admitted. (JA-18, 113, 114, 130.)**

21. In the FRB’s first 2017 meeting, FRB members made clear that their minds were already made up, prior to doing any investigation. **R: Denied. (JA-4, 35, 40-41, 105-106.)** For example:

- a. Professor Gilson told the group that he came into the report “with priors,” and thought the Blinkx incident “alone should have been enough to fire him.” He described himself as “seething,” and expressed the view that Plaintiff was “irredeemable.” (JA-105, 530-532.)

R: Denied that Gilson’s mind was “made up,” otherwise Admitted that the statements were attributed to him. (JA-35, 40-41.)

- b. Professor Schlesinger expressed that the group wanted “affirmative evidence that he has changed his behavior, not just that he has stayed out the papers.” **R: Denied that Schlesinger’s mind was “made up,” otherwise Admitted that the statement was attributed to him. (JA-105-106, 364.)** Another FRB member responded, “At face value, we don’t see the evidence.” (JA-106, 530-532.) **R: Denied that the FRB member’s mind was “made up,” otherwise Admitted that Ex. 73 contains this statement. (JA-105, 106, 609.)**
- c. Professor Edmondson stated that it was “obvious that we shouldn’t have him on the senior faculty.” (JA-107, 530- 532.) **R: Denied that Edmondson’s mind was “made up,” otherwise Admitted that the statement was attributed to her. (JA-32.)**

Evidence Gathering

22. The FRB’s fact-finding process included “interviews” and “reviewing documents.” (Edmondson Dep. 35.) **R: Admitted.** The FRB gathered evidence including “[q]uite a few” documents and interviews, “papers, emails, articles,” and notes from witness interviews. (JA-3, 25; *see also* JA-36, 104, 203-204.) **R: Admitted that the FRB gathered papers, emails, articles, and notes from witnesses.**
23. The FRB did not share the “papers, emails, articles” or notes from interviews that it gathered with Plaintiff. (JA-109). **R: Denied as to papers, emails, articles; otherwise Admitted. (JA-54, 416-467.)** The FRB did not even give Plaintiff the names of the witnesses interviewed. (JA-30-31.) **R: Admitted.**
24. Before the FRB’s first 2017 meeting, Dean Crispi sent the other members of the FRB a four-page document that she described as a “record of staff and faculty reflections on and [sic] interactions with Associate Professor Ben Edelman between September 2016 through April

2017.” (JA-176, 468-471.) **R: Admitted.** This document was not provided to Plaintiff. (JA-176.)

R: Admitted.

25. At the FRB’s first meeting in 2017, Dean Crispi relayed feedback she had gathered from staff orally. **R: Admitted. (JA-530- 532.)** She never shared that feedback with Plaintiff. (JA-177, 530-532.) **R: Denied that Plaintiff did not receive certain feedback; otherwise Admitted. (JA-468-471.)**

26. Dean Crispi came to the first 2017 FRB meeting with notes about Plaintiff’s interactions with staff during the extension. (JA-732.) **R: Admitted.** That overview included “Situations” where she had gripes, including two professors who had disabilities whom Plaintiff had assisted with accommodations. (JA-173-174, 732.) **R: Denied as to the characterization of her notes as “gripes;” Denied that Plaintiff’s efforts resulted in accommodations; otherwise Admitted. (JA-468-471.)** Crispi objected to Plaintiff’s interventions, but never spoke to either faculty member about whether they felt HBS had adequately accommodated their disabilities or why they sought assistance from Plaintiff. (*Id.*) **R: Denied as to any implication that she had an affirmative duty to speak with faculty; otherwise Admitted. (JA-146, 148-149, 172-173.)** Crispi never shared that document with Plaintiff. (JA-177, 530-532.) **R: Admitted.**

27. The FRB identified a number of witnesses whose testimony it believed would be particularly relevant based on their interactions with Plaintiff. **R: Admitted.** At the FRB’s first 2017 meeting, Professor Schlesinger identified the IT Group, W02 and “the LCA Teaching Group over the entire semester,” and members of the dean’s office as important. (JA-105-106, 530-532.) **R: Denied as to any implication that these were the only people he referred to; otherwise Admitted. (JA-530-532.)** Dean Crispi’s notes on the meeting indicate that the FRB

believed that W07, W01, W16, and W02 were important. (JA-177, 733.) **R: Denied that she characterized these people as “important;” otherwise Admitted. (JA-177, 733.)**

28. Following the FRB’s first meeting, Professor Edmondson and Dean Cunningham created a list of witnesses to interview. (JA-23, 485-488.) **R: Admitted.**

29. FRB members took notes on their interviews, and shared the notes with Dean Cunningham. **R: Admitted.** Those notes were not shared with Plaintiff. (JA-25, 26, 108, 109, 127, 199-200, 493-506.) **R: Admitted.**

30. Dean Crispi, who is the ultimate supervisor of all staff at HBS, was assigned to interview all staff witnesses (JA-146, 180, 739-743). **R: Admitted.**

31. Professor Edmondson instructed Crispi to interview W07, HBS’s Chief Information Officer, whose perspective the FRB saw as particularly important. (JA-485-488, 956-957.) **R: Denied. (JA-182, 956-957.)** Crispi did not interview W07. (JA-181-182.) **R: Admitted that she did not interview W07 in July/August 2017; otherwise Denied. (JA-181-182, 546-547, 953, 954.)**

32. Edmondson also instructed that Dean Crispi interview “2-3 more from IT.” (JA-485-488, 956-961; *see also* JA-181.) **R: Denied. (JA-956-961.)** She interviewed only one person from IT, and no one from Media Services. **R: Denied. (JA-546- 548, 550-551.)** The 2015 FRB had criticized Plaintiff for disagreeing with Media Services staff about whether classroom projection screens should be reduced in size. (JA-154, 182-183.) **R: Admitted that the projector issue was one area the FRB reviewed in 2015; otherwise Denied. (JA-280.)**

Plaintiff’s Interview with FRB

33. The FRB interviewed Plaintiff on August 14, 2017. **R: Admitted.** According to the only notes of the interview, the FRB members asked him only three questions, all general questions about his past two years. (JA-622-623). **R: Denied. (JA178, 201, 424.)** FRB members did not

recall asking other questions. (JA-110, 178.) **R: Denied. (JA-37, 178, 424.)** The FRB did not ask Plaintiff about topics that would later be central to its report, including his outside activities or disclosures on his written work. (JA-110.) **R: Denied. (JA-37, 81, 110, 424.)**

34. The FRB did not ask Plaintiff about feedback from its interviews with faculty or staff. (JA-184.) **R: Admitted that Crispi did not ask this question; Denied as to whether other FRB members did. (JA-110, 178.)**

35. The FRB did not ask Plaintiff about any of the incidents described in Dean Crispi's overview of his interactions with staff. (JA-178-179, 622-623, 732.) **R: Denied. (JA-178.)**

Expansion of FRB review

36. On August 24, 2017, Dean Healy forwarded Professor Edmondson and Dean Cunningham a Wall Street Journal article that mentioned Plaintiff in connection with possible conflicts of interest with Microsoft and Google. (JA-132, 684.) **R: Admitted.** Cunningham questioned whether this subject was within the scope of the current FRB, or involved "new allegations," and noted further that many other HBS faculty worked with outside companies, which HBS policies permit. (JA-18, 133, 479-481, 962-963.) **R: Admitted that she initially questioned whether it was in scope, otherwise Denied because she concluded it was in scope. (JA-421, 479-481, 967.)**

37. The FRB nevertheless began to take a "more careful look" at all of Plaintiff's outside activities, including at a lawsuit that he filed, in his capacity as an attorney, against American Airlines. **R: Denied as to any implication that the FRB was not interested in Edelman's outside activities before then; otherwise Admitted. (JA-37, 376-378, 424, 426, 429-430.)** Much of the FRB's report ultimately focused on these subjects. (JA-6, 19, 376-378, 421-425, 483.) **R: Admitted.** Harvard's witnesses could not say who decided to add these subjects to the FRB's inquiry, or why. (JA-19, 206, 218-219, 231.) **R: Denied. (JA-218-219, 376-378.)**

38. Members of the FRB found and shared with one another a number of articles about Plaintiff's outside activities. (JA-624-628.) **R: Admitted.** They did not share these articles with Plaintiff, discuss them at his interview, or give him an opportunity to respond to their contents. (JA-111-113.) **R: Denied as to any implication that Plaintiff needed to respond to articles not cited in the FRB Report; otherwise Admitted.** (JA-416-467.)

39. On September 1, 2017, Professor Edmondson asked Plaintiff to submit, within four business days, a complete list of his outside activities including client names, and a complete list of all publications and work products, for the two years since the 2015 FRB review, and to explain "how [he] thought about . . . when and where to seek advice or approvals on [his] outside activities, and when and how to include disclosures on [his] input" including specific questions about the American Airlines litigation. (JA-19-20, 483.) **R: Admitted.** Plaintiff was never able to address these issues in an interview. (JA-81.) **R: Admitted that there were no further interviews of Plaintiff.**

FRB Report

40. Dean Cunningham wrote a first draft of the FRB's report, which FRB members then edited, creating a "draft report." (JA-202.) **R: Admitted.**

41. The FRB granted Plaintiff six business days to respond to its draft report. (JA-947.) **R: Admitted.** He did respond, and the FRB wrote an addendum and made minor changes in its final report, which was provided to the Standing Committee and Appointments Committee. (JA-463-467.) **R: Admitted.**

42. Neither the draft nor the final report included "papers, emails [or] articles" that the FRB gathered, or notes from interviews it conducted. (JA-416-467.) **R: Admitted that the FRB Report and drafts did not include notes from interviews; otherwise Denied.** (JA-421-425.)

The attachments to the final report were solely the FRB's requests to Plaintiff and Plaintiff's

statements, made in the context of the FRB process. (JA-416-467.) **R: Admitted.** The FRB provided Plaintiff with no evidence outside the report itself. (JA-109.) **R: Admitted that the evidence provided was contained in, specifically identified in (in the case of certain articles), or attached to the Report; otherwise Denied. (JA-416-467.)**

43. The FRB's final report focused on "Recent Activities," which it divided into two sections: "Respect for others inside the institution," and "Outside activities and conflict of interest." (JA-418-425.) **R: Admitted that the Report contained those and other sections.**

Respect for others inside the institution

44. The section "Respect for others inside the institution" consisted almost entirely of bullet-point statements purportedly drawn from the FRB's interviews, expressing opinions about Plaintiff and his behavior. (JA-418-421.) **R: Denied as to any implication that the 2017 July and August interviews were the sole source of the bullet-point statements. (JA-546-574.)**

45. On reviewing the first draft of this section of the report, Professor Schlesinger objected that too many comments were positive to Plaintiff. **R: Denied as to the characterization of his comment as an objection; otherwise Admitted. (JA-633.)** At his instruction, Dean Crispi and Dean Cunningham added more negative comments. (JA-114, 632-633.) **R: Denied that this was at Schlesinger's "instruction;" otherwise Admitted. (JA-909-911, 914.)**

46. This section of the FRB report begins by explaining that "members of the FRB met with 21 individuals" to solicit input on Plaintiff. **R: Admitted.** It describes the bullet points as "comments" that express "feedback" from "colleagues" and "from staff." (JA-419-420.)

R: Admitted.

47. The report presents the comments anonymously and without context. (JA-419-420.)

R: Admitted that Plaintiff was not given the names of individuals; otherwise Denied. (JA-418-419.) Nothing in the report indicates which speaker observed Plaintiff in what context,

capacity, or duration. (JA-418-421.) **R: Denied because the report does not characterize each bullet point as representing a single speaker and because the report states which comments came from either NOM colleagues or other faculty and staff. (JA-185, 186, 418-420.)**

48. The final report misrepresented the balance of the comments that the FRB received, including a disproportionate share of the negative statements made in interviews while underrepresenting positive statements. (JA-1122.) **R: Harvard responds that this statement is not a factual assertion to which an admission or denial can be given. To the extent such a response is required, this statement is Denied because the report included significantly more positive than negative comments and the full balance of negative-to-positive statements was a judgment call made by the FRB. (JA-28, 75-80, 546-574.)**

49. Dean Crispi edited an early draft of the report to add two additional comments that she called “quotes” from her “interviews” with HBS staff. (JA-188, 744.) **R: Denied that her comment in the draft report characterized them as “quotes;” otherwise Admitted. (JA-644.)** Those additions read, “He leaves a lot of unproductive work for people since he jumps to solutioning without thinking through implications or engaging others,” and “He goes off on tangents or down rabbit holes, and he doesn’t know as much as he thinks he knows.” (JA-187, 644.) **R: Admitted.** Neither addition appears in Dean Crispi’s notes of her FRB interviews. **R: Admitted that the additions do not appear verbatim in her July/Aug 2017 interview notes; otherwise Denied. (JA-547, 550-551, 953.)** During her deposition, Crispi was unable to identify who, if anyone, said these things, when, or whether in person, by email, or in some other way. (JA-185, 187-188, 499-500, 644.) **R: Denied. (JA-187-188 (Crispi Dep. 219:18-220:3, 221:18-222:11).)**

50. Members of the FRB felt it was important, in interviewing witnesses, to understand how witnesses knew and had interacted with Plaintiff. (Edmondson Dep. 169.) **R: Denied. (JA-24.)** They asked each witness for this context but did not include it in the report. (JA-24, 418-421, 492.) **R: Admitted that they asked witnesses for context; otherwise Denied. (JA-418, 419, 420.)**

51. The anonymity and decontextualization of the quotations in the draft and final reports made it impossible for Plaintiff or readers of the report to evaluate what basis each witness had for his/her opinion, or rebut negative comments. (JA-1144-1145.) **R: Denied. (JA-453-454, 457-461.)**

52. Professor W02 was the head of the LCA teaching group, which Plaintiff was directed to join. *See* ¶ 10, *supra*. **R: Denied that he was “directed” to join; otherwise Admitted. (JA-15, 478, 609-610, 781.)** HBS leaders intended for Professor W02 to observe Plaintiff during the extension. (JA-167-168, 223, 679, 780.) **R: Admitted.** Professor W02’s interview was extremely positive; he gave Plaintiff a “green light.” (JA-496.) **R: Admitted that W02’s interview notes include the “green light” statement. Harvard also responds that the characterization of “extremely positive” is not a factual assertion to which an admission or denial can be given. To the extent such a response is required, this characterization is Denied. (JA-496.)**

53. The FRB’s report included just one anonymous and decontextualized comment from Professor W02. (Compare JA-496 to JA-419.) **R: Denied that it was decontextualized, otherwise Admitted. (JA-419.)** Despite the importance Dean Nohria assigned to W02’s evaluation (JA-679, 780.), a reader of the FRB report had no way to identify W02’s feedback. (JA-418-421.) **R: Admitted that a reader would not know which feedback was W02’s; otherwise Denied. (JA-223.)**

54. The FRB interviewed the head of Plaintiff's other teaching group, Professor W17, whose view of Plaintiff was also very positive. (JA-617.) **R: Admitted that W17 was interviewed. Harvard further responds that the characterization of the interview as "very positive" is not a factual assertion to which an admission or denial can be given; to the extent a response is required, this characterization is Denied. (JA-617-618.)** Again, the FRB used one quote from his interview, without context, attribution, or identification of W17's special position to evaluate. (JA-420.) **R: Denied that there was no context, otherwise Admitted that W17 was not identified by name in the report. (JA-419-420.)**

55. Among the four staff that the FRB interviewed was Plaintiff's faculty support specialist. (JA-28, 499.) **R: Admitted.** She was extremely positive about her interactions and working relationship with Plaintiff. (JA-499.) **R: Harvard responds that the characterization of the interview as "extremely positive" is not a factual assertion to which an admission or denial can be given. To the extent such a response is required, this characterization is Denied. (JA-499.)** The report included a single comment from her interview. (JA-499, compare to JA-419.) **R: Admitted that one bullet point in the report was from her interview; Denied that this represented a single comment from her. (Compare JA-419 to JA-499.)** Again, readers of the report would be unaware of her unusually strong basis to evaluate, sitting directly outside Plaintiff's office and interacting with him multiple times per day. (JA-1146.) **R: Harvard responds that the characterization of "unusually strong" is not a factual assertion to which an admission or denial can be given. To the extent such a response is required, this characterization is Denied. (JA-28.)** Plaintiff was unable to highlight her feedback, because the FRB did not provide him with the evidence it gathered, and the report anonymized all comments.

(Id.) **R: Admitted that the FRB did not provide Plaintiff with her name; otherwise Denied. (JA-204, 368, 419-420.)**

56. The most negative statements in the FRB's report came from witnesses who had limited interactions with Plaintiff. **R: Harvard responds that the characterizations of "most negative" and "limited interactions" are not factual assertions to which an admission or denial can be given. To the extent such a response is required, these characterizations are Denied. (JA-546-574.)** For example, the report included three negative bullet points from W16 (compare JA-493 to JA-420.), with whom Plaintiff had exactly two in-person interactions during the two-year extension. (JA-1118, 1147-1148.) **R: Admitted that the report included bullet points from W16's interview; otherwise Denied. (JA-74, 552.)** Two other witnesses (W01 and W06) were present at both meetings. (JA-174-175.) **R: Denied that W01 was at the April 2017 ATSC meeting; otherwise Admitted. (JA-837.)** W01 had neither positive nor negative impressions of Plaintiff's participation in those meetings (JA-621.), and W06 said he had "nothing but positive things to say" about Plaintiff, and that Plaintiff was "perceptive" in the meetings (JA-499.). **R: Denied that W06 had only positive things to say; otherwise Admitted. (JA-499.)**

57. If Plaintiff had known the identities of the speakers, he would have been able to contextualize negative statements, or, as with Professor W16's comments, to contrast them with positive evaluations from others present. **R: Harvard responds that what Plaintiff "would have been able to" do is not a factual assertion to which an admission or denial can be given. To the extent such a response is required, Denied. (JA-28, 453-454, 457-461.)** He could not do this because the FRB withheld interview notes. (JA-1114-1122.) **R: Harvard responds that what Plaintiff "could not do" is not a factual assertion to which an admission**

or denial can be given. To the extent such a response is required, Denied. (JA-453-454, 457-461.)

58. Professor W08 said of Plaintiff, “He’s abrupt. He lacks grace. He’s more apt to pressure others—he asks questions the way you might in a seminar. But he’s intellectually sharp. Asks great questions. He agrees to disagree.” (JA-502.) **R: Admitted.** The FRB’s report included the first three sentences, removing the subsequent three. (JA-420.) **R: Admitted that the subsequent sentences and other of W08’s statements were not included.** Edmondson’s contemporaneous impression of the interview was positive, but the report gave the opposite impression. (JA-28, 507.) **R: Denied. (JA-507; compare JA-570 with JA-419, 420.)** Without the full notes, Plaintiff could not correct this misleading presentation. (JA-1115-1116, 1144-1146.) **R: Harvard responds that what Plaintiff “could not” do about the “misleading” presentation is not a factual assertion to which an admission or denial can be given. To the extent such a response is required, Denied. (JA-29-30, 453-454, 457-461.)**

59. The FRB report particularly emphasized a witness’s statement that “With his superiors, he has more of a filter.” (JA-420-421.) **R: Denied. (JA-420-421.)** This statement was the sole basis for a paragraph claiming that Plaintiff may “interact[] differently with at least some staff than he does with faculty colleagues” (JA-420), and for a statement that it found “indications that Professor Edelman’s . . . interactions with [staff] changed when other faculty members were present” (JA-417.) **R: Denied that it was the sole basis; Admitted that it was the only bullet point under that paragraph. (JA-29.)** The notes from Professor Schlesinger’s interview with the witness, Professor W04, reveal that this information is second or third hand, and that W04’s full statement, truncated in the FRB’s report, was, “With his superiors he has more of a filter (*as we all probably do*).” (JA-497 (emphasis added); JA-25.) **R: Denied that the notes indicate this**

statement was second/third hand; Admitted that the phrase “as we all probably do” was not in the report. (JA-497.) The FRB report did not reveal that W04’s remark was second or third hand, or that W04 viewed Plaintiff’s conduct as consistent with other HBS faculty. (JA-420-421.) **R: Denied that the notes indicated this statement was second or third hand; otherwise Admitted that the report did not contain this information. (JA-497.)** Professor W04 testified that the comment was not based on firsthand knowledge, and that his interactions with Plaintiff were all positive. (JA-247-248.) **R: Denied. (JA-247-248.)**

60. The FRB report truncated a witness’s statement that, “Mr. Edelman can have a tendency to threaten to take something to the next level, but he has taken a step back,” by including only the first part of the sentence, stopping before the word “but.” (JA-26, 420, 500.) **R: Admitted that “but he has taken a step back” was not in the report.**

61. In other cases, the FRB cherry-picked negative quotes from witnesses whose true views were positive. **R: Harvard responds that the characterization of “cherry-picked” is not a factual assertion to which an admission or denial can be given. To the extent such a response is required, Denied. (JA-29.)** For example, the single quote from Professor W05 was, “He has worked on being less harsh, but his views are still quite clear to those who hear him.” (JA-421.) **R: Denied that it was presented as a “quote” in the report; otherwise Admitted. (JA-421.)** But W05 also wrote a letter about his views on Plaintiff’s candidacy. **R: Admitted.** When not filtered through the FRB’s note-taking and selective quotation, W05 “strongly support[ed] the case for tenure.” (JA-873-876) **R: Admitted that W05’s letter stated the quoted language; otherwise, the remainder of this statement does not contain a factual assertion to which an admission or denial can be given. To the extent such a response is required, the remainder of the statement is Denied. (JA-29.)**

62. Similarly, the FRB extracted only negative quotes from a generally positive interview of a staff member. **R: Denied. (Compare JA-499-500 with JA-419.)** That witness generally spoke positively about Plaintiff (JA-183.), yet the FRB included three negative quotes from her in its report. (JA-499-500 versus JA-419-421.) **R: Denied that the report presented the bullet points as quotes; Admitted that these three bullet points were based on her interview notes. (JA-419-421, 499-500.)** Harvard further responds that the statement “generally positive” is not a factual assertion to which an admission or denial can be given. To the extent such a response is required, **Denied. (JA-499-500.)** With access to the notes, Plaintiff would have corrected this misleading impression. (JA-1116.) **R: Harvard responds that what Plaintiff “would” do and the assertion that his efforts would have successfully “corrected” a “misleading impression” are not factual assertions to which an admission or denial can be given. To the extent a response is required, Denied. (JA-29, 75, 465, 499-500.)**

63. If he had received the interview notes that the FRB withheld, Plaintiff would have pointed out that the comments were, in some cases, invented; that they were excerpted in misleading ways; that the speakers did not always have a basis for their statements; or that other witnesses contradicted them. (JA-1114-1122.) **R: Harvard responds that what Plaintiff “would” do and the characterizations of the bullet points in the report are not factual assertions to which an admission or denial can be given. To the extent such a response is required, Denied. (JA-29, 75; Compare JA-546-574 with JA-419-421.)**

64. If Plaintiff had had access to the following documents, he would have used them to oppose FRB criticism of his character and conduct. JA-363, 383-407, 468-471, 493-506, 611-621, 720, 855. See JA-1147. **R: Harvard responds that what Plaintiff “would” do is not a**

factual assertion to which an admission or denial can be given. To the extent such a response is required, Denied. (JA-29, 75, 465.)

Outside activities and conflict of interest

65. Rather than reach conclusions about whether Plaintiff's work violated HBS Community Values, the FRB report section "Outside activities and conflicts of interest" reported "potential concerns" relating to Plaintiff's "work, outside activities and disclosures." (JA-421.) **R: Denied that the report did not reach a conclusion on Community Values or that it was limited to a conclusion about Community Values. (JA-417-418, 425-426.)**

66. The first such example cited the Wall Street Journal article forwarded to the FRB (*see* ¶ 36 *supra*), and examined Plaintiff's disclosures of his work for Microsoft in writing that he published about Google, which the FRB claimed were "inconsistent." (JA-421-422.)

R: Admitted.

67. The FRB did not analyze those disclosures individually in light of what the HBS Conflict of Interest Policy (JA-533-536) required. **R: Denied that the FRB was required to. (JA-422, 464-465.)** In one instance, the FRB quoted a disclosure on a web page linking to the article, but the article itself contained a more detailed disclosure. **R: Denied because the FRB report cited the article, and the quoted language ("Disclosure statement: No potential conflict of interest was reported by the authors") appears at JA-1203.** In another, the disclosure was drafted by the editor of a journal owned by HBS after Plaintiff provided all relevant information. **R: Admitted that Plaintiff provided the information requested by the Harvard Business Review's editor.** A third article merely mentioned in passing a company that was bought by Google years after the relevant events. **R: Denied that this is a separate article from the one mentioned in the last sentence; Harvard also responds that the characterizations of "merely mentioned in passing" and "relevant events" are not factual assertions to which an**

admission or denial can be given. To the extent a response is required, Denied. (JA-422, 1152.) Plaintiff had inadequate time to uncover all the reasons why the FRB's concerns were misplaced, but could have done so if these issues had been identified as allegations in the FRB's initial letter to him. (JA-1148-1153.) **R: Denied. (JA-87-88.) Harvard also responds that what Plaintiff "could have done" is not a factual assertion to which an admission or denial can be given. To the extent such a response is required, Denied. (JA-426, 430, 439, 444-445, 447, 449.)**

68. The FRB's second example concerned the American Airlines lawsuit. **R: Admitted.** The FRB did not explain what about that activity was inconsistent with HBS Community Values. (JA-421-422.) **R: Denied that the report did not reach a conclusion on Community Values or that it was limited to a conclusion about Community Values. (JA-417-418, 425-426.)** Rather, the FRB expressed concern that the lawsuit could result in negative publicity for HBS. (JA-425.) **R: Denied. (JA-425.)** The only evidence cited for this concern was a blog post from 2015. **R: Denied. (JA-425.)** But that post, from two years earlier, did not concern the lawsuit filed in 2017. (*Id.*; JA-21-22.) **R: Admitted.** Plaintiff noted this error in his response to the draft report (JA-453) but the FRB did not revise its report to remove the reference. (JA-21, 421-422.) **R: Denied that the FRB was obligated to revise the report; otherwise Admitted. (JA-367.)**

69. Professor Brian Hall, the head of Plaintiff's academic unit, contacted the FRB after reviewing its draft report, and asked "that the revised FRB report clarify why the [American Airlines] suit is described in the report; if there is no accusation of wrongdoing on Ben's or [Plaintiff HBS Professor Max Bazerman's] part, we believe discussion of the AA suit should be removed from the report or qualified in a way that explains why it remains." (JA-188, 748.) **R: Admitted.**

70. The FRB declined to make the changes Professor Hall requested. (JA-188-189, 745.)

R: Admitted that the FRB did not make the changes Hall requested; Denied the FRB needed to implement Hall's requests. (JA-422-425.)

71. Professor Esty was an HBS expert on conflict of interest (calling himself HBS's "de facto co-chief compliance officer (JA-386)) and helped to draft its Conflict of Interest policy (JA-95,

212.) **R: Admitted that Esty referred to himself that way and helped craft the Conflict of**

Interest Policy. On October 24, 2017, he told Dean Healy he was concerned that Professor

Edelman was being singled out for a review of his outside activities, writing, "one could interpret the selective enforcement of our community standards on a single candidate as discriminatory."

(JA-134-135, 687-688.) **R: Admitted.**

72. Despite lengthy discussion of Plaintiff's work for Microsoft and writings about Google,

the FRB's report did not reach a conclusion about whether his work and disclosures complied

with HBS's Outside Activities and Conflict of Interest policies. (JA-421-422.) **R: Admitted that**

it did not reach a conclusion about whether his work and disclosures complied with HBS's

Outside Activities and Conflict of Interest policies; Denied that the FRB was required to.

(JA-415-416, 422, 464-465.)

73. The FRB's report stated that it "was not an investigation" and "did not seek to pass

judgment on the particular outside activities and work that Professor Edelman pursued."

R: Admitted. Instead, it said, it "looked at Professor Edelman's interactions and activities over

the past two years using the narrower lens of the feedback he received in 2015 to determine

whether there was sufficient evidence of learning and changed behavior." (JA-416.)

R: Admitted. The report did not answer that question; rather, it concluded, "We [] find ourselves

unable to say, with full conviction, that the issues raised following the 2015 review have been

satisfactorily resolved.” (JA-425.) **R: Denied that this conclusion did not answer the question. (JA-425, 265.)** The FRB did not conclude that Plaintiff had violated Community Values, nor did it decide whether Plaintiff had committed misconduct or violated any HBS policy. (JA-27, 207.) **R: Denied. (JA-417, 425.) Denied that the report had to reach these conclusions. (JA-425, 465.)**

Standing Committee and Appointments Committee meeting

74. Professor Schlesinger presented the FRB report to the Standing Committee. (JA-115.) **R: Admitted.** In speaking with the SC, Schlesinger did not go beyond what was in the report. (JA-115.) **R: Admitted.** Afterwards, Schlesinger told the rest of the FRB that the SC “wanted to know the population that we had talked to.” (JA-116.) **R: Admitted.** Contemporaneous notes about his SC discussion include the fact that SC members asked “Who did we really talk to.” (Ex. 70.) **R: Denied that these were contemporaneous notes. (Compare JA-510 with JA-651.)** The SC voted on Plaintiff’s candidacy, and the vote was split, with opposition based on the FRB report. (JA-704-710.) **R: Admitted that most SC members who voted against Plaintiff cited his outside activities and conflict of interest disclosures raised by the report. (JA-54-55, 705-708.)**

75. Prior to the AC meeting on Plaintiff’s tenure case, its members were given access to a file of materials regarding his case. **R: Admitted.** That file was topped by a “Preamble to Ben Edelman Reports,” which discussed the FRB reports in his case. (JA-691-693.) **R: Denied that the preamble was on top of the file. (JA-932-934.)** Both the 2015 draft FRB report and the 2017 FRB report were included in the file. (JA-139.) **R: Admitted.**

76. When the AC met to discuss Plaintiff’s tenure case, Dean Healy asked Professor Edmondson to “talk about the FRB review.” (JA-138, 140, 690.) **R: Admitted.** A “significant portion” of the AC discussion was about the subject matter of the FRB’s report. (JA-140-141.)

R: Admitted that Dean Healy characterized it that way. During the AC meeting, Professor Edmondson spoke “more than anyone,” prompting concern from some faculty about excessive FRB influence. (JA-142-143, 694-710). **R: Denied. (JA-142-143, 695, 701.)**

77. AC members wrote written comments explaining their votes. **R: Admitted that AC members had the opportunity to do so and many did.** Many stated that the FRB report swayed them against Plaintiff’s candidacy. (JA-57-61, 144, 694-710.) **R: Admitted that six of the 30 AC members who voted “No” mentioned the FRB report. (JA-700-704.)**

78. 41 AC members, or 58.5%, voted in favor of tenure; 29 voted against; and 2 abstained. (JA-238, 774.) **R: Denied that there were 29 “No” votes instead of 30; Denied that 41 votes equal 58.5% of the 73 votes cast. (JA-694-704.)** Dean Nohria closely followed the vote. (JA-939.) **R: Admitted that he asked for the vote tally.**

Nohria Decision

79. Following the vote of the AC, it was Dean Nohria’s decision whether to recommend tenure for Plaintiff. (JA-213, 272.) **R: Admitted.**

80. Dean Nohria received the FRB’s report but did not receive the evidence underlying it. (JA-228, 236.) **R: Denied as to the implication that the report did not contain evidence; otherwise Admitted that he received the report. (JA-54, 421-425.)**

81. In evaluating tenure matters, Dean Nohria considered the input of the faculty, including the Standing Committee’s recommendation, the discussions of the AC, and the vote of the AC. (JA-214.) **R: Admitted.**

82. Following the AC meeting, Dean Nohria asked Dean Healy for data on past tenure votes. (JA-215, 767-779.) **R: Admitted.** That data revealed that Dean Nohria and his predecessor promoted every candidate who had at least a 75% vote, and promoted all faculty members but one with at least a 65% vote. (JA-215, 767-768.) **R: Admitted.**

83. Dean Nohria considered the AC vote “a very difficult vote to move forward on the basis of.” (JA-238; *see also* JA-1133-1135.) **R: Admitted.**

84. Dean Nohria did not recommend that Plaintiff be granted tenure. (JA-226.) **R: Admitted.**

85. On or about December 4, 2017, Dean Nohria prepared notes for announcing his decision on Plaintiff’s candidacy to the AC. (JA-239, 365.) **R: Admitted that he prepared notes for himself prior to the December 5, 2017, faculty meeting where he announced his decisions on tenure.** Those notes emphasize that, “Tenure requires a system of faculty governance and putting our faith in a multi-step deliberation and voting process.” **R: Admitted that the notes make this statement.** They described a “zone of discretion for the dean” where a vote fell between 65% and 80%, and stated that Plaintiff’s case “fell outside my zone of discretion and would have violated our norms of when a case can be tenured.” (JA-365.) **R: Admitted.**

86. Dean Nohria testified that Plaintiff’s case was “well over the bar of what we expect” as far as “scholarly contributions,” and that the school was “persuaded that yes, he did meet our teaching standard,” but that he was “turned down for tenure for not meeting community standards” based on the issues that the FRB addressed. (JA-240, 242.) **R: Admitted.** Dean Nohria believed that Plaintiff was an outstanding scholar in an important field. (JA-782.) **R: Admitted.** The FRB’s report was an important factor in Dean Nohria’s decision not to recommend Plaintiff for tenure. (JA-240.) **R: Admitted.**

87. Because Dean Nohria did not recommend Plaintiff for tenure, his application was denied and his employment at HBS ended on June 30, 2018. (JA-1144.) **R: Admitted.**

Other Evaluations of Plaintiff’s Candidacy

88. The Subcommittee evaluating Plaintiff’s candidacy in 2017 concluded that Plaintiff more than met HBS’s standards for academic work. (JA-880-901.) **R: Denied that it concluded he**

“more than met” the academic standards; otherwise Admitted. (JA-900.) The Standing Committee agreed. (JA-651.) **R: Admitted that it agreed he passed the academic standards.**

89. Internal letters praised Plaintiff’s academic work. (JA-848-851, 857-867.) **R: Admitted.** So did outside letters. (JA-868-872, 877-879, 935-938.) **R: Admitted.**

90. Dean Healy remembered that Plaintiff’s work was “really excellent and more than met our standards for promotion to full professor.” (JA-136.) **R: Denied that the statement reflects Healy’s opinion. (JA-136.)**

Respectfully submitted,
BENJAMIN EDELMAN,
By his attorneys,



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Dated: October 24, 2025

CERTIFICATE OF SERVICE

I, Ruth O’Meara-Costello, hereby certify that I have caused a true and correct copy of the foregoing document to be served on counsel of record for Defendant by email on October 24, 2025.

A handwritten signature in cursive script, reading "Ruth O'Meara-Costello". The signature is written in dark ink and is positioned above a horizontal line.

Ruth O'Meara-Costello

As to Defendant's **Responses:**

Respectfully submitted,

PRESIDENT AND FELLOWS OF HARVARD
COLLEGE,

By its attorneys,

/s/ Martin F. Murphy

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Dated: December 5, 2025

CERTIFICATE OF SERVICE

I, Martin F. Murphy, hereby certify that I have caused a true and correct copy of the foregoing document to be served on counsel of record for Plaintiff by email on December 5, 2025.

/s/ Martin F. Murphy

Martin F. Murphy