Article 16
Grievance and Arbitration
(University, January 27, 2017)

16.1 The parties recognize and endorse the importance of establishing a prompt, fair and efficient mechanism for the orderly resolution of complaints and agree to make every effort to encourage the informal resolution of complaints before they become formal grievances. Any formal or informal resolution achieved must be consistent with the terms of this Agreement. The procedures set forth in this Article shall be the sole and exclusive method of disposing of grievances.

16.2 Definitions.

16.2.1 Grievance: A grievance is an alleged violation of (1) a specific provision(s) of this Agreement, (2) procedures set forth in college bylaws or department bylaws, or (3) a signed agreement between AAUP-WSU and the University unless that agreement specifically precludes a grievance or specifies an alternative procedure for resolving disputes.

16.2.2 If the AAUP-WSU files a grievance on behalf of a group, the outcome will apply equally to all applicable Members of the Bargaining Unit.

16.2.3 Grievant: A Grievant is a Bargaining Unit Faculty Member or group of Bargaining Unit Faculty Members who has a grievance or the AAUP-WSU acting on behalf of Members of the Bargaining Unit.

16.2.4 In this Article, “the Provost” refers to the Chief Academic Officer of the University. “A provost” refers generally to the Provost or any Assistant or Associate Provost.

16.2.5-6 Respond and File: The terms “respond” and “file,” as used in this Article, refer to the dates notifications are received (or reasonably should have been received) by the parties to whom they are sent. Copies of all notifications will be sent to the AAUP-WSU and to the Provost.

16.2.6 Time Limits: Time limits referred to in this Article as “days” shall be defined as Monday through Friday throughout the calendar year, excluding Saturdays and Sundays, formal holidays recognized by the University, and periods when the University is officially closed.

16.2.7-8 Basic Provisions: Except as specified in Sections 11.8, 13.15, and 15.16, all applicable steps of the grievance procedure set forth in this Agreement will be pursued to completion before any application for arbitration will be made, unless the AAUP-WSU and the University enter into a written agreement to proceed directly to arbitration.

16.2.8-9 Unless extended by mutual consent, in writing, the time limits specified herein will be the maximum time allowed. If the University fails to comply with the time limits to respond, the
Grievant may advance the grievance to the next step by sending a letter of notification to the administrator at the next step. Failure to advance the grievance shall render the grievance moot.

16.2.9 Provisions for grievances regarding promotion and tenure are described in Section 13.15. Provisions for initiating grievances regarding annual evaluation are described in Section 11.8.

16.3 Informal Complaint Procedure: The parties intend and agree that all disputes should be resolved informally, whenever possible, before the filing of a formal grievance, and the parties encourage open communications so that resorting to the formal grievance procedure will not be necessary. To this end, Bargaining Unit Faculty are encouraged to present a complaint to a chair, dean, or provost who the Grievant believes to be most likely able to resolve the complaint as soon as practical for the purposes of resolving the dispute. A discussion of the complaint between the Grievant and the administrator to whom the complaint is presented shall occur at a mutually agreeable time not later than five (5) days after the request for a discussion regarding the complaint. Unless otherwise agreed by both the Grievant and administrator to whom the grievance is presented, only the grievant and this administrator will be present at the meeting to discuss the complaint. However, a grieving party has the right to be advised or assisted by the AAUP-WSU in attempting to secure informal resolution, but such assistance is not required. Any settlement, withdrawal, or other disposition of a complaint at the informal stage shall not constitute a binding precedent in the settlement of complaints or grievances.

16.4 Grievance Step One: A Bargaining Unit Faculty Member(s) or the AAUP-WSU may file a grievance with the Associate Provost for Faculty and Staff Affairs not later than forty (40) days after the event giving rise to the grievance or no later than forty (40) days after the Grievant knew or reasonably should have known of the event giving rise to the grievance.

16.4.1 The Grievant shall state clearly on the grievance form in Appendix F the nature of the grievance, the contractual provision(s) allegedly violated, the name of the University administrator whose actions are being grieved (if known), the dates when the alleged act or omission giving rise to the grievance occurred, and the remedy sought. The Grievant shall also sign the form and submit it to the Associate Provost with a copy to AAUP-WSU. If the Grievant is the AAUP-WSU, the grievance form shall so state. In the case of a grievance filed by the AAUP-WSU, the President or Designee of AAUP-WSU shall sign the grievance form and shall be the AAUP-WSU’s representative.

16.4.2 The University shall inform AAUP-WSU of any grievance meeting and AAUP-WSU has the right to be present at any grievance meeting. The Dean or Provost may also have a second person attend any grievance meeting. No attorney representing either party will attend any grievance meeting.

16.4.3 A Dean or provost shall hold a meeting with the Grievant and the AAUP-WSU’s representative (if the AAUP elects to be present) at a mutually agreeable time and location within ten (10) days after the grievance was filed and shall then respond in writing to the Grievant and the AAUP-WSU no later than fifteen (15) days after the completion of the
grievance meeting(s). If the Grievant or the AAUP-WSU does not accept the Step One answer, either may, within fifteen (15) days, file a Step Two grievance with the Associate Provost.

16.4.4 However, if the Step One grievance was convened by the Provost, then there will be no Step Two Grievance; but, if the AAUP-WSU is not satisfied with the Step One answer, it shall have the sole right to submit the grievance to arbitration by an external arbitrator within thirty (30) days after receiving the Step One answer.

16.5 Grievance Step Two: Upon receiving a Step Two grievance, the Provost or Associate Provost shall hold a meeting with the Grievant and the AAUP-WSU’s representative (if the AAUP elects to be present) at a mutually agreeable time and location within ten (10) days after the Associate Provost has received the grievance. The purpose of this meeting is to discuss and attempt to resolve the grievance. The provost who holds the meeting shall respond in writing to the Grievant and the AAUP-WSU no later than fifteen (15) days after the completion of the grievance meeting(s).

16.6 Arbitration: If the AAUP-WSU is not satisfied with the Step Two answer, it shall have the sole right to submit the grievance to arbitration by an external arbitrator, within thirty (30) days after receiving the Step Two answer. A Grievant who is not satisfied with the Step Two answer (or, if Section 16.4.4 applies, the Step One answer) may request that AAUP-WSU submit the grievance to arbitration, but the Grievant must do so in writing within ten (10) days after receiving the Step Two (respectively Step One) answer; however, AAUP-WSU is not obligated to accept such a request.

16.6.1 If the AAUP-WSU elects to pursue external arbitration, representatives of the AAUP-WSU and of the Provost shall meet within ten (10) days to select an arbitrator. In the event the parties are unable to agree upon an arbitrator, the parties shall ask either the American Arbitration Association (AAA) or the Federal Mediation and Conciliation Service (FMCS) to provide fifteen names. If the parties are unable to agree on which of the 15 nominees shall serve as an arbitrator, then the arbitrator will be chosen by each party alternately striking names.

16.6.2 The arbitrator’s decision shall be final and binding upon the Grievant(s), the AAUPWSU, and the University and shall be rendered within thirty (30) days after the arbitration hearing record is closed.

16.6.3 The cost of the arbitration shall be borne equally by the University and the AAUPWSU except that costs related to the appearance of any witness shall be paid by the party who calls that witness. If a court reporter is requested and a transcript ordered by only one party, the court reporter’s attendance fee, and the cost of transcripts for that party and the arbitrator shall be borne by the requesting party. If both sides request a transcript, the court reporter’s fee and the cost of the transcripts shall be split equally between the parties.

16.6.4 Remedies. An external arbitrator hearing a grievance shall be bound by the following restrictions:

16.6.4.1 The arbitrator’s decision shall be limited to only the question or questions submitted for decision;
16.6.4.2 The arbitrator shall not substitute a judgment for that of the University where the University’s judgment and actions do not violate the written provisions of this Agreement;
16.6.4.3 The arbitrator shall have no authority to add to, subtract from, alter, change or modify any of the provisions of this Agreement;
16.6.4.4 The arbitrator shall not render any decision which would result in the violation of state or federal law; and

16.6.4.5 The arbitrator shall make no award that provides a Bargaining Unit Faculty Member compensation greater than would have resulted had there been no violation.

16.7 A Member of the Bargaining Unit who participates in a grievance procedure will not be subject to disciplinary reprisal because of such participation.

16.8 To investigate and process a grievance, either party shall be provided the opportunity to inspect and/or copy any relevant information possessed by the other party. Such access will be provided within five (5) days after the delivery of a written request to the Provost or the AAUP-WSU President. However, the requesting party is not entitled to any information that is confidential under any applicable law. In addition, the requesting party is entitled to view information in its existing form only.

16.9 No changes can be made to a grievance form once it is filed under Section 16.4 except as follows: After completing Step Two and before submitting a grievance to arbitration, the Grievant may change or add to the specific provision(s) of the Agreement allegedly violated. In such cases, the amended grievance will be resubmitted to the Provost, who no later than ten (10) days after receiving the amended grievance form shall reconfirm his or her original Step Two written response, offer an amended written response, or call another Step Two meeting in accordance with Section 16.5.