

## **Faculty Handbook, Chapter Three, Part I, Article I, Sec. E. Tenure**

1. Academic tenure is an essential component of the development and delivery of quality educational and research programs at the University. The basic purpose of tenure is to provide the assurance of academic freedom throughout the University. Another important purpose of tenure is to attract and retain outstanding faculty. Tenured faculty members are protected explicitly against dismissal or disciplinary action because their views are unpopular or contrary to the views of others. Their non-tenured colleagues derive protection by general extension of these principles of academic freedom.
2. When awarded, academic tenure rests at the constituent faculty level rather than at the departmental level. The award of academic tenure to a faculty member is a career commitment which grants that faculty member the right to retain his or her appointment without term until retirement. The appointment of a tenured faculty member may be terminated only for just cause. In the event that a tenured faculty member's school, department, or other unit of the University in which the faculty member's primary appointment rests is closed or reduced in size, the University shall nevertheless make all reasonable attempts to provide a tenured faculty member with an appointment of unlimited duration until retirement.
3. Examples of just cause for the termination of tenured, tenure track, and non-tenure track faculty members include (i) grave misconduct or serious neglect of academic or professional responsibilities, defined in Section IV, Professional Responsibilities, as determined through a fair hearing under Section IV.D; (ii) educational considerations, as determined by a majority vote of the entire constituent faculty of the affected individual, which lead to the closing of the academic unit of the University, or a part thereof, in which the faculty member has a primary appointment; and (iii) financial exigent circumstances which force the University to reduce the size of a constituent faculty of the University in which the faculty member has a primary appointment. Unless educational considerations also exist, a tenured faculty member may be terminated for financial exigent circumstances only after all faculty members who are not tenured in that constituent faculty have been terminated, in the order determined by the by-laws of the constituent faculty. Terminations of non-tenured faculty for financial exigency shall occur with at least twelve months notice or at the end of the current appointment term, whichever occurs earlier. In order for a tenured faculty member to be terminated prior to all non-tenured faculty members in that constituent faculty, a majority of the voting members of the constituent faculty in which the affected tenured faculty member has his or her primary appointment must determine that a financial exigency and educational considerations exist sufficient to justify that action. Under items (ii) or (iii), just cause would be presumed not to have existed if new faculty members were appointed to fulfill the functions of recently terminated faculty.
4. The termination of tenured faculty is considered to be an extreme and extraordinary occurrence. Termination of tenured faculty shall not be made on the basis of short-term, cyclical changes in student enrollment and shall not be arbitrary, capricious, or punitive. The termination of tenured faculty or the closing of a department or school because of educational considerations must reflect long-range judgments that the educational mission of the constituent faculty or the institution as a whole will be jeopardized unless the proposed action is taken. Tenured faculty can be terminated because of financial exigency only after all reasonable attempts to resolve the

difficulty have failed. Financial exigent circumstances must be factually established and demonstrably bona fide. If it is determined that a tenured faculty member's primary appointment in a particular constituent faculty shall be terminated for financial exigency or educational considerations, the University shall make all reasonable attempts, including providing retraining, to transfer the affected faculty member to another position consistent with the discipline of the affected faculty member in 1) another department within the constituent faculty, 2) another constituent faculty within the University, or 3) a position outside the University. Transfers to another position within the University shall be accomplished only after consultation with the dean and department chair (in constituent faculties with a department structure) of the unit to which the affected faculty member will be transferred.

5. The Faculty Senate must review and report on the factual accuracy of a claim of financial exigency or educational considerations sufficient to lead to the termination of tenured faculty. If the termination of tenured faculty appointments is proposed, the university administration and the affected unit shall supply all information required for a full study of the need for the proposed action. If the proposal is to close a unit within a school or college, the faculty of the affected school or college shall have the initial responsibility for studying the need for the closure and for making recommendations. If the proposal is to close a school or college, the Faculty Senate shall have the initial responsibility for studying the need for closure and for making recommendations. The Faculty Senate shall appoint a committee to review the findings of the affected constituent faculty. This review committee shall include faculty representation from both the Budget and the Personnel Committees of the Faculty Senate. The review committee shall report in a timely fashion to the Faculty Senate Executive Committee which shall present the findings to the Faculty Senate. The recommendation of the Faculty Senate shall be forwarded to the president of the University for submission to the Board of Trustees.

6. Tenured faculty members whose appointments are to be terminated pursuant to part (ii) or part (iii) of paragraph 3, above, shall receive a terminal appointment of no less than twelve months.

## **Faculty Handbook, Chapter Three, Part I, Article IV, Section D. Hearing Procedures**

### 1. Initiation of Procedures.

Preliminary inquiry into allegations of conduct violating professional standards or university standards or regulations on the part of a faculty member which may lead to disciplinary action (includes but is not limited to Section I, E, 3, i) may be initiated by the Executive Committee of the Faculty Senate (hereinafter, Executive Committee) or by a representative of the president of the University. In either case, the purpose of initial investigation shall be to make clear to the faculty member the allegations brought against him or her, to hear his or her response, to resolve the issues if possible, and to guide the president in his or her decision whether to invoke a formal hearing. If initial investigation is made by the Executive Committee, that body shall transmit its recommendation to the president and the concerned faculty member by letter. It may also be necessary in the case of research misconduct to notify outside funding agencies and journals, according to the University's research misconduct guidelines and federal regulations.

In the case of sexual harassment, there is a separate procedure. (See Chapter 4, General Policies, XIV. Sexual Harassment.)

In the case of research misconduct allegations, there will be an obligation to document the investigation according to applicable federal regulations and according to the "Guidelines Involving Allegations of Research Misconduct" (Chapter 3, Part Two, Section II, of the Faculty Handbook). For this purpose, these allegations shall be reported immediately to the Research Integrity Officer. (See "Policy for Responding to Allegations of Research Misconduct," Chapter 3, Part Two, Sec. II).

### 2. Decision for a Formal Hearing

The decision to hold a formal hearing of charges against a faculty member shall reside with the president. The president shall notify in writing the faculty member and the Executive Committee of a decision to institute a hearing. This notice shall contain a complete statement of the charges as prepared by the representative of the president, who will represent the University in the hearing.

### 3. Suspension.

In an emergency **or when necessary to protect the health or safety or best interests of the University**, suspension of the faculty member **during a preliminary inquiry or** pending the outcome of formal proceedings shall be the prerogative of the president. Suspension shall be with full salary. However, if the suspension is upheld, the faculty member may be required to repay his or her salary from the date of suspension.

### 4. Selection of the **Hearing Panel and Committee**

- a) **Creation of Hearing Panel (as also described in Article V, Section C.3). In the spring semester of each academic year, the secretary of the Faculty Senate shall solicit faculty**

members interested in serving on hearing committees during the following academic year and shall make a list of those faculty members who respond. At the same time, the secretary shall make a list of those faculty members who have served as members of recent hearing committees or as advisors to parties. The secretary shall provide the lists to the Faculty Senate Nominating Committee. The Nominating Committee shall nominate twenty-five members of the University Faculty to serve on the Hearing Panel from which members of hearing committees are to be chosen during the following academic year. The Nominating Committee shall designate up to eight of the panelists nominated as eligible to serve as chair of a hearing committee. The panelists so designated shall have had multiple experiences with the hearing process as members of hearing committees or as advisors to parties or shall have other relevant training or experience.

- b) The hearing committee shall consist of five members. Within two weeks of notice of the president's decision for institution of a formal hearing, the chair of the Faculty Senate shall direct the selection of a hearing committee. The notification from the chair of the Faculty Senate to the Office of the Secretary of the Faculty Senate shall specify the period within which the selection process shall be completed and the hearing begun. The selection of members of the hearing committee will proceed in the following manner. From the panel, the president's representative shall first appoint one member and the faculty member shall then appoint one member. The chair of the Faculty Senate shall then appoint three members of the panel, at least one of whom shall be a person eligible to chair a hearing committee. The chair of the Faculty Senate shall designate the chair of the hearing committee. If either party fails to take advantage of his or her privilege of appointing a committee member, then the remaining members of the hearing committee shall be appointed from the Hearing Panel by the chair of the Faculty Senate. If the chair of the hearing committee is unable to serve or has a conflict of interest, the chair of the Faculty Senate may remove him or her and designate a replacement from the Hearing Panel to serve as chair for the hearing committee. If a member of the hearing committee is unable to serve or is removed because of conflict of interest, the chair of the Faculty Senate shall designate a replacement from the Hearing Panel. Timeliness of the hearing process is important, and the committee should consider evening and weekend meetings.
- c) When a party claims, or it appears to the chair of the hearing committee, that a conflict of interest exists between the party and a member of the hearing committee, the chair of the hearing committee shall consider and decide whether to remove the member from the committee.

When a party claims, or it appears to the chair of the Faculty Senate, that a conflict of interest exists between the party and the chair of the hearing committee, the chair of the Faculty Senate shall consider and decide whether to remove the chair of the hearing committee.

Only the following grounds justify removal of the chair or a member of the hearing committee: 1) The chair or member is a witness or is otherwise directly involved in the matter. 2) The chair or member has a history of conflict with either party. 3) The chair or member is unable to approach the issues in a fair and neutral way.

## 5. Conduct of the Hearing

- a) The chair of the hearing committee shall preside at the hearing and shall make all procedural decisions, subject to being overruled by a vote of three of the five committee members.
- b) The faculty member and the president's representative shall be afforded an opportunity to obtain necessary witnesses and documentary or other evidence. The committee may call its own witnesses.
- c) Copies of the president's representative's statement of charges, supporting documents, the faculty member's answer, and all other material shall be made available to both parties and the hearing committee by the Office of Secretary of the Faculty Senate. The secretary shall work with both parties and the hearing committee to schedule a hearing at the earliest possible date. Notice of the time and place of the hearing shall be sent to all parties. Not less than five calendar days before the hearing, the parties shall submit to the chair of the hearing committee their lists of witnesses and any documents they plan to offer as evidence at the hearing. The chair of the hearing committee shall meet with the parties in person or by conference call to discuss the witness lists, the documentary evidence to be introduced, and possible stipulations of fact. The chair of the hearing committee shall work with the parties to assist them in focusing the issues to be decided and to minimize or eliminate the offering of irrelevant or repetitive testimony or documents. If either party demands to present a witness or a document that the chair believes to be irrelevant or repetitive, the chair of the hearing committee may rule the testimony or document inadmissible. The inadmissibility ruling shall be communicated to the other members of the hearing committee, and the committee may overrule the chair by a vote of three of the five committee members. The chair of the hearing committee may also request that additional documentary material be furnished by either party. The additional material so provided by a party shall be made available to the other party and to the committee members unless it is ruled inadmissible by the chair of the hearing committee. The availability of documents is subject to the rule that the confidentiality of any documents accepted by the University in confidence shall be maintained. Thus, for example, letters written by external referees or reviewers submitted in connection with a promotion and/or tenure action shall not be disclosed to a complainant if they were received in confidence.
- d) Unless specifically requested to be absent by the chair of the hearing committee, the secretary of the Faculty Senate shall be present at the hearing to advise the hearing committee on procedure and to make the audio recording. Otherwise, the hearing shall be closed to all except the hearing committee, faculty member, president's representative, witnesses and advisors. The hearing committee shall maintain the confidentiality of closed proceedings. No persons involved in the hearing procedure shall discuss the hearing matter except as provided herein.
- e) The president's representative and the faculty member shall each have the right to an advisor of his or her choice, chosen from the faculty or administration, excluding the Office of General Counsel. Such advisor shall have no right to participate in the proceedings except to advise the individual he or she is advising.

- f) The president's representative and the faculty member, and their advisors, shall have the right to be present during the hearing, except for the deliberations of the committee and for the examination of witnesses concerning confidential material.
- g) An audio recording of each hearing session shall be made by the hearing committee and preserved in the University Archives. Access to the recording shall be limited to the president, the president's representative, the faculty member, and members of the hearing committee. Requests shall be addressed to the chair of the Faculty Senate. Upon approval, the recording shall be made available for review in the Office of the Secretary of the Faculty Senate. To preserve confidentiality, no other recording or copies of these recording will be permitted.
- h) The chair shall open the hearing by reading the charges against the faculty member, as transmitted by the president's representative.
- i) The faculty member shall then submit a written statement answering the charges. This statement may be read by the faculty member or his or her advisor; otherwise, it shall be read by the chair.
- j) The order of the hearing, unless the chair of the hearing committee rules otherwise, shall be: the president's representative's witnesses; the faculty member's witnesses; any hearing committee witnesses; and closing statements by the president's representative and the faculty member. Witnesses, other than the Parties, may be present at the hearing only while presenting their testimony.
- k) The chair may grant adjournments to enable either party to investigate evidence as to which a valid claim of surprise is made.
- l) The faculty member and the president's representative shall have the right to cross-examine all witnesses. The hearing committee shall have the right to examine all witnesses.
- m) The hearing committee shall not be bound by strict rules of legal evidence and should consider any relevant evidence which is of probative value in determining the issues involved.
- n) The burden of proof that just cause exists for disciplining a faculty member shall rest with the University and shall be met only by a preponderance of evidence in the hearing record. The decision and findings shall also be based solely on the hearing record.
- o) Findings, conclusions, and recommendations of the hearing committee shall be by majority vote. Statements of majority positions shall be accompanied by any statement of dissent or of separate concurrence.

## 6. Report of the Hearing Committee

Within ten business days after conclusion of the hearing, the hearing committee shall prepare a written report of its findings and conclusions and shall recommend a sanction, if any, to be applied. Copies of this report shall be transmitted to the faculty member, the president, the president's representative, and the chair of the Faculty Senate.

## 7. Decision by the President

The final resolution of the complaint shall be made by the president, normally within a period of two weeks after receipt of the committee's report. If the president agrees with the report, he or she shall so notify the secretary of the Faculty Senate in writing. The secretary of the Faculty Senate shall transmit the written notification to the chair and members of the hearing committee, the chair of the Faculty Senate, and to the parties.

If the president disagrees with the report and its recommendations, he or she shall so notify the secretary of the Faculty Senate in writing, setting forth the reasons for disagreement and final resolution of the matter. The secretary of the Faculty Senate shall transmit the written notification to the chair and members of the hearing committee, the chair of the Faculty Senate, and to the parties.

In the alternative, the president may ask the secretary of the Faculty Senate to reconvene the hearing committee to reconsider its final report and recommendations in the light of his or her stated objection thereto. In such case, the hearing committee shall reconvene to reconsider the matter, taking new evidence, if necessary, and report the results of its reconsideration to the secretary of the Faculty Senate. The secretary of the Faculty Senate shall transmit the written notification to the president, the parties, and the chair of the Faculty Senate, copied to the chair and members of the hearing committee the written report of its reconsideration.

After review of the hearing committee's reconsidered report and recommendations, the president shall transmit to the secretary of the Faculty Senate a final resolution of the matter; and the secretary shall transmit the same to the parties, the chair and members of the hearing committee, and the chair of the Faculty Senate, as well as to the appropriate dean, chair or vice president.

## **Faculty Handbook, Chapter Three, Part I: Article V: Grievance Procedures**

### Sec. A. Introduction

The purpose of this Article V is (1) to provide a source of informal advice on faculty personnel matters to members of the faculty, which source can serve the function of informal conciliation where appropriate; and (2) where the informal mechanisms are not successful in resolving the dispute, to provide a mechanism for the formal adjudication of disputes about personnel practice. This adjudication mechanism, described in Section C below, is substantially similar to the procedures described in Article IV, Section D of the Policies and Procedures. The difference is that procedures under IV, D are the result of a complaint by the faculty or by the administration against an individual faculty member, while procedures under V, C are the result of a complaint by an individual faculty member against a person or group with administrative or supervisory authority over that faculty member (e.g., a dean, a department chair, or a member of a promotion and tenure committee)... Allegations of research misconduct and sexual harassment shall be sent to the appropriate committee or administrative offices as outlined in ARTICLE IV, SECTION D, 1. The chair of the Faculty Senate shall represent the University Faculty in overseeing the grievance process.

### Sec. B. Informal Advice and Conciliation

In most cases, a faculty member who desires information about and assistance with university-related “disputes regarding personnel practice” or “inter-collegial conflicts” among faculty (as both are defined below) that may affect him or her should first consult with his or her own colleagues or his or her own dean or department chair. However, there may be instances in which the faculty member needs advice from a knowledgeable source outside of his or her own faculty. An example of this would be where an adverse recommendation on promotion, tenure, or retention has been made at the departmental level, and the individual believes that the proper procedures were not followed in making the decision. For such cases, the faculty member may choose to seek advice from the Faculty Conciliation and Mediation Program (“the Program”). The program provides for a Conciliation Counselor appointed by the Provost or his/her designee, with review and concurrence by the Faculty Senate. The Conciliation Counselor provides a voluntary mechanism to attempt to resolve faculty concerns or disputes by agreement of the parties. The Conciliation Counselor is available to provide informal advice and conciliation on the informal request of any faculty member. The Conciliation Counselor serves as a facilitator to attempt to reach an agreed-upon resolution of the parties and does not have the authority to make a decision with respect to the dispute or issue. As a condition for participating in the Program, participants to an informal conciliation must agree to suspend the formal grievance process pending completion of the conciliation/mediation process.

Certain matters may not be appropriate for conciliation efforts by the Conciliation Counselor, such as requests for monetary relief from the respondent, requests for relief that would be contrary to other university policies or processes (such as a substantive decision regarding the tenure and promotion process), or conciliation efforts that would circumvent the university’s obligations to investigate and take action as required by law. Separate procedures govern matters of sexual harassment and research misconduct. In such matters, reporting and review is required



as set out in Chapter 4, XIV (Sexual Harassment Policy) and Chapter 3, Part Two, II (Policy for Responding to Allegations of Research Misconduct.) . Issues brought by a faculty member alleging discrimination in a personnel practice or inter-collegial dispute must be referred by the Conciliation Counselor to the Faculty Diversity Officer or his/her designee in the Office of Inclusion, Diversity & Equal Opportunity, so that the matters may be investigated. The Conciliation Counselor, after reviewing the issue, will determine if the matter is appropriate for mediation. The Conciliation Counselor shall consult with the Provost and/or the Office of General Counsel in reaching such determinations. In reaching a resolution, the Conciliation Counselor shall ensure that each of the parties has the authority to bind the applicable individual, entity, or the university to the agreed-upon resolution.

The Conciliation Counselor shall maintain as confidential the source and nature of the inquiry from the faculty member and shall not reveal it to the Faculty Senate, to the administration, or to any other group or person without the express consent of the faculty member, except as (1) otherwise required by law, (2) necessary to refer the matter to another appropriate office, or (3) required by university policy to be reported and referred to another office, such as in the case of allegations of sexual harassment, discrimination, or research misconduct (see below). If a conciliation/mediation process is agreed to by the parties, the parties and the Conciliation Counselor shall maintain the confidentiality of communications within that process, unless disclosure is otherwise required by law or otherwise provided in this provision. The Conciliation Counselor may disclose to the Provost or his/her designee the names of the parties to a mediation/conciliation, the meeting dates, and whether a resolution has been reached. The Conciliation Counselor, without disclosing confidential information, shall report to the Provost, the Committee on Faculty Personnel, and to the Faculty Senate each year with respect to the operation of the office and to make recommendations on the improvement of the Program.

The Provost or his/her designee may provide for selection and training of additional persons to serve as assistants to the Conciliation Counselor or to succeed the Conciliation Counselor. Upon recommendation of the Conciliation Counselor, the Provost or his/her designee may provide for the formal mediation by a qualified outside mediator in appropriate instances.

## Sec. C. Formal Grievance Procedures

### 1. Scope of Procedures

- a) A formal grievance complaint may be filed by any person (hereafter referred to as the complainant) who is a full-time member of the University Faculty, as defined in the "Constitution of the University Faculty."
- b) A grievance complaint may be filed and this procedure invoked only if the complaint alleges a dispute about "personnel practice," which means a conflict between a faculty member and a person with administrative or supervisory authority over that faculty member (e.g., a dean, a department chair, or a member of a promotion and tenure committee) with respect to some employment-related adverse action against the faculty member. An "inter-collegial conflict" is a conflict between faculty colleagues about academic matters, other than a decision to take employment-related adverse action, when such a conflict seriously impairs the effective functioning of the academic unit. Examples

include disrespectful behavior, refusal to participate or to include others in the decision making process within the unit, and airing conflict to outsiders, thereby causing damage to the grievant, the unit, or the University. An “inter-collegial conflict” may not be the subject of a grievance complaint. This formal grievance procedure does not apply to such conflicts.

- c) Such a grievance complaint may be filed against any person (hereafter referred to as the respondent) who is a member of the University Faculty or a member of the university administration, except the president. A grievance complaint may not be filed against the University Faculty, the Faculty Senate, or the Board of Trustees.
- d) Formal grievances shall be heard in any case in which it is charged that the respondent has taken action which adversely affects the complainant and which action is a violation of the "Constitution of the University Faculty," Chapter 3 of the Faculty Handbook, the by-laws of the Faculty Senate, the by-laws of a constituent faculty or of a department, these policies and procedures, or of accepted norms of university academic personnel practice. Action on promotion and tenure matters is subject to these procedures only if it is charged that the respondent(s) failed to follow prescribed procedures or used an impermissible standard. (See Section 1b above.) A hearing committee which considers a grievance involving a promotion or tenure matter may not in its recommendations substitute its judgment with respect to the merits of the action for the judgment of any other committee, department, or faculty which is part of the normal review process (see Chapter 3, Part One, I (Appointments, Reappointments, Resignations, Promotions and Tenure).
- e) Only the chair of the Faculty Senate and the secretary of the Faculty Senate may communicate with the hearing committee regarding interpretation of the formal grievance procedure as stated in the Faculty Handbook.

## 2. Complaint

- a) Formal procedures are initiated by filing with the secretary of the Faculty Senate a written grievance complaint addressed to the chair of the Faculty Senate. The complaint shall identify by name the complainant and all respondents, and shall state the grievance briefly and clearly. The complaint shall refer specifically to the “Constitution of the University Faculty,” Chapter 3 of the Faculty Handbook, the by-laws of the Faculty Senate, the by-laws of a constituent faculty or of a department, these policies and procedures, or other accepted norms of university personnel practice that were allegedly violated. The complaint shall state the remedy requested. Supporting documents may be presented at this time. If the complainant does not have the names of the respondents, he or she may identify the faculty, committee, or other group, and the chair of the Faculty Senate shall identify the appropriate individuals and designate them by name as respondents. Additional respondents may be added to the grievance proceedings at any stage subject, however, to such requirements of notice as the hearing committee may impose in the interest of fair and expeditious process. Upon receipt of the complaint, the secretary shall send copies thereof to the respondent and the chair of the Faculty Senate. The respondent shall submit a written answer to the complaint and supporting documents within two weeks after delivery of the complaint, unless for good reason the chair of the

Faculty Senate grants an extension. Upon receipt of the answer, a copy thereof shall be forwarded by the secretary to the complainant and to the chair of the Faculty Senate.

### 3. Selection of the Hearing Panel and Committee

- a) Creation of Hearing Panel (as also described in Article IV, Section D.3). In the spring semester of each academic year, the secretary of the Faculty Senate shall solicit faculty members interested in serving on hearing committees during the following academic year and shall make a list of those faculty members who respond. At the same time, the secretary shall make a list of those faculty members who have served as members of recent hearing committees or as advisors to parties. The secretary shall provide the lists to the Faculty Senate Nominating Committee. The Nominating Committee shall nominate twenty-five members of the University Faculty to serve on the Hearing Panel from which members of hearing committees are to be chosen during the following academic year. The Nominating Committee shall designate up to eight of the panelists nominated as eligible to serve as chair of a hearing committee. The panelists so designated shall have had multiple experiences with the hearing process as members of hearing committees or as advisors to parties or shall have other relevant training or experience.
- b) The hearing committee shall consist of five members. The selection of members of the hearing committee will proceed in the following manner. From the panel, the respondent shall first appoint one member and the complainant shall then appoint one member. The chair of the Faculty Senate shall then appoint three members of the panel, at least one of whom shall be a person eligible to chair a hearing committee. The chair of the Faculty Senate shall designate the chair of the hearing committee. If either the complainant or the respondent fails to take advantage of his or her privilege of appointing a committee member or if a group of respondents cannot agree among themselves upon such selection, then the remaining members of the hearing committee shall be appointed from the Hearing Panel by the chair of the Faculty Senate. If the chair of the hearing committee is unable to serve or has a conflict of interest, the chair of the Faculty Senate may remove him or her and designate a replacement from the Hearing Panel to serve as chair for the hearing committee. If a member of the hearing committee is unable to serve or is removed because of conflict of interest, the chair of the Faculty Senate shall designate a replacement from the Hearing Panel. Timeliness of the grievance process is important, and the committee should consider evening and weekend meetings.
- c) When a party claims, or it appears to the chair of the hearing committee, that a conflict of interest exists between the party and a member of the hearing committee, the chair of the hearing committee shall consider and decide whether to remove the member from the committee.

When a party claims, or it appears to the chair of the Faculty Senate, that a conflict of interest exists between the party and the chair of the hearing committee, the chair of the Faculty Senate shall consider and decide whether to remove the chair of the hearing committee.

Only the following grounds justify removal of the chair or a member of the hearing committee: 1) The chair or member is a witness or is otherwise directly involved in the

dispute. 2) The chair or member has a history of conflict with the complainant or respondent. 3) The chair or member is unable to approach the issues in a fair and neutral way.

- d) No persons involved in the grievance procedure shall discuss the grievance except as provided herein.

#### 4. Conduct of the Hearing

- a) Copies of the complaint, supporting documents, the respondent's answer, and all other material shall be made available to both parties and the hearing committee by the Office of Secretary of the Faculty Senate. The secretary shall work with both parties and the committee to schedule a hearing at the earliest possible date. Notice of the time and place of the hearing shall be sent to all parties. Not less than ten calendar days before the hearing, the parties shall submit to the chair of the hearing committee their lists of witnesses and any documents they plan to offer as evidence at the hearing. The chair of the hearing committee shall meet with the parties in person or by conference call to discuss the witness lists, the documentary evidence to be introduced, and possible stipulations of fact. The chair of the hearing committee shall work with the parties to assist them in focusing the issues to be decided and to minimize or eliminate the offering of irrelevant or repetitive testimony or documents. If either party demands to present a witness or a document that the chair believes to be irrelevant or repetitive, the chair of the hearing committee may rule the testimony or document inadmissible. The inadmissibility ruling shall be communicated to the other members of the hearing committee and the committee may overrule the chair by a vote of three of the five committee members. The chair of the hearing committee may also request that additional documentary material be furnished by either party. The additional material so provided by a party shall be made available to the other party and to the committee members unless it is ruled inadmissible by the chair of the hearing committee. The availability of documents is subject to the rule that the confidentiality of any documents accepted by the University in confidence shall be maintained. Thus, for example, letters written by external referees or reviewers submitted in connection with a promotion and/or tenure action shall not be disclosed to a complainant if they were received in confidence.
- b) The complainant and respondent shall have the right to be present during the hearing, except for the deliberations of the committee and for the examination of witnesses concerning confidential material.
- c) Unless specifically requested to be absent by the chair of the hearing committee, the secretary of the Faculty Senate shall be present at the hearing to advise the hearing committee on procedure and to make the audio tape recording. Otherwise, the hearing shall be closed to all except the hearing committee, complainant, respondent, witnesses and advisors. The hearing committee shall maintain the confidentiality of closed proceedings.
- d) The burden of proof (by preponderance of the evidence) shall be borne by the complainant. The hearing committee shall not be bound by the rules of evidence applicable to legal proceedings but may consider any relevant evidence with due regard for its probative value. If witnesses are presented by either party, the other party and the

committee shall have the right to cross-question any witness. The hearing committee may call its own witnesses, in which case the parties shall also have the right to cross-question such witnesses. Witnesses shall be present at the hearing only while presenting their testimony. The hearing committee may examine the complainant, the respondent, and all witnesses. However, the Conciliation Counselor who has provided informal advice or conciliation, pursuant to Section B above, shall not testify during the grievance process as to anything said or done during a conciliation proceeding without the express consent of the complainant and the respondent(s).

- e) During the pendency of the grievance process and at any stage thereof prior to final resolution, the complainant may withdraw the complaint and terminate the grievance proceeding, provided, however, that the respondent shall be given notice of the withdrawal and shall consent in writing to the termination. If the respondent does not consent to the termination, then the proceeding shall continue to its final conclusion.
- f) An audio recording of each hearing session shall be made by the hearing committee and preserved in the university archives. Access to the recording shall be limited to the complainant, respondent, and members of the hearing committee. Requests shall be addressed to the chair of the Faculty Senate. Upon approval, the recording shall be made available for review in the Office of the Secretary of the Faculty Senate. To preserve confidentiality, no other recording or copies of these recording will be permitted.
- g) The complainant and respondent each shall have the right to an advisor of his or her choice, chosen from the faculty or administration. Such advisor shall have no right to participate in the proceedings except to advise his or her principal.
- h) The order of the hearing, unless the chair of the hearing committee rules otherwise, shall be as follows:
  - 1. Complainant's opening presentation of his or her case, followed by questions by the hearing committee, if any;
  - 2. Respondent's presentation of his or her defense, followed by questions by the hearing committee, if any;
  - 3. Complainant's witnesses;
  - 4. Respondent's witnesses;
  - 5. Rebuttal by complainant;
  - 6. Surrebuttal by respondent.

Normally, witnesses, other than the complainant and respondent, shall be present at the hearing only when testifying.

- i) As soon as possible following the hearing, the hearing committee shall make its findings of fact, conclusions and recommendations by majority vote. The findings of fact shall be based solely on the record adduced at the hearing, and no evidence extrinsic to the record shall be considered.

- j) The chair of the hearing committee shall preside at all sessions and shall make all procedural decisions, subject to being overruled by a vote of three of the five committee members.

#### 5. Failure to respond to complaint

It is expected that all respondents in grievances cooperate and appear for the hearing.

The deliberate failure or refusal of a respondent to file an answer or the deliberate failure or refusal of the respondent to appear at the hearing after the filing of an answer, shall not prevent the hearing committee from proceeding with the hearing. In case of such default or partial response on the part of the respondent, the hearing committee shall hear the complainant's oral presentation and shall make findings and recommendations based upon the oral and written material presented by the complainant and any oral or written presentation by the respondent.

#### 6. Commencement or pendency of litigation or external administrative proceeding

If either before or after the complainant files a grievance complaint he or she commences litigation or files a complaint with a local, state, or federal agency concerning the matters set forth in the grievance complaint, the pendency of such litigation or administrative proceeding shall not prevent the hearing committee from proceeding with the hearing in due course. The complainant shall not be deprived of the internal grievance process by virtue of such litigation or administrative proceeding.

#### 7. Report of the Hearing Committee

Within two weeks of the end of deliberations, the chair of the hearing committee shall present a written report of its findings of fact, conclusions, and recommendations. If the vote of the committee is not unanimous, the minority may prepare a minority report to be appended to the majority report. The secretary of the Faculty Senate shall forward the report to the president, the chair of the Faculty Senate, and to the parties, copied to the chair and members of the hearing committee.

If the majority finds in favor of the complainant, the report should be considered an interim report. It should require the respondent to reconsider the matter complained of and to report the result of such reconsideration to the secretary of the Faculty Senate within ten calendar days from the date of receipt of the committee's interim report. Upon receipt of the respondent's report of reconsideration of the matter, the committee may revise its interim report. The respondent's report of reconsideration shall be added as an addendum to the hearing committee's report. The report and addendum shall constitute the final report of the hearing committee. When the committee has completed its report and recommendations, the committee may request a meeting with the president to present its report. It is understood that this meeting is intended to provide the president with an opportunity to hear directly from the committee and for the president to ask questions about the report. The president's response to the report will not be made at this meeting. The final report shall forthwith be transmitted by the secretary of the Faculty Senate to the president, the chair of the Faculty Senate, and to the parties, copied to the chair and members

of the hearing committee, with the committee's recommendations.

If the majority finds in favor of the respondent, the hearing committee's report shall be considered its final report.

#### 8. Decision by the President

The final resolution of the complaint shall be made by the president, normally within a period of two weeks after receipt of the committee's final report. If the president agrees with the majority report, he or she shall so notify the secretary of the Faculty Senate in writing. The secretary of the Faculty Senate shall transmit the written notification to the chair and members of the hearing committee, the chair of the Faculty Senate, and to the parties.

If the president disagrees with the final report and its recommendations, he or she shall so notify the secretary of the Faculty Senate in writing, setting forth the reasons for disagreement and final resolution of the matter. The secretary of the Faculty Senate shall transmit the written notification to the chair and members of the hearing committee, the chair of the Faculty Senate, and to the parties.

In the alternative, the president may ask the secretary of the Faculty Senate to reconvene the hearing committee to reconsider its final report and recommendations in the light of his or her stated objection thereto. In such case, the hearing committee shall reconvene to reconsider the matter, taking new evidence, if necessary, and report the results of its reconsideration to the secretary of the Faculty Senate. The secretary of the Faculty Senate shall transmit the written notification to the president, the parties, and the chair of the Faculty Senate, copied to the chair and members of the hearing committee the written report of its reconsideration.

After review of the hearing committee's reconsidered report and recommendations, the president shall transmit to the secretary of the Faculty Senate a final resolution of the matter; and the secretary shall transmit the same to the parties, the chair and members of the hearing committee, and the chair of the Faculty Senate. At the end of the academic year, faculty members who served on hearing committees may request a meeting with the president to discuss the grievance process in general terms without reference to the specific cases that have been heard.

## **Faculty Senate By-laws, By-law VII Committees**

### ***Item e. Committee on Faculty Personnel.***

- 1) The Committee on Faculty Personnel shall consist of a deputy designated by the President, a member of the Committee on Faculty Compensation elected by that committee to serve *ex officio*, the Faculty Diversity Officer to serve *ex officio*, and nine voting members of the University Faculty elected by the Faculty Senate. The term of membership on the Committee on Faculty Personnel shall be three years; three members shall be elected each year. Each elected member shall be eligible for re-election only after the lapse of at least one year following the expiration of two consecutive three-year terms of membership.
- 2) The Committee on Faculty Personnel shall review faculty personnel policies and procedures, including those having to do with appointment, reappointment, promotion, tenure, and retirement and shall recommend to the Faculty Senate as to desirable changes in these policies and procedures.
- 3) At least once during each academic year, the Committee on Faculty Personnel, or one of its subcommittees, shall discuss with the Provost or Dean of each constituent faculty the personnel policies and procedures of that faculty. Each year the Committee shall request of the chief academic officer of the University a report on personnel actions in the categories designated in Paragraph (2) of this item.