

ATTACHMENT 2 – REVISIONS TO FWP COMPLAINT PROCEDURES

Proposed modifications to the Committee on Faculty Welfare and Privileges Termination and Complaint Procedures. These proposed revisions involve only Complaint Procedures; they do not change Termination Procedures:

NOTE: In the modifications, strikethrough is text to be deleted; underlined is text to be added

COMMITTEE ON FACULTY WELFARE AND PRIVILEGES TERMINATION AND COMPLAINT PROCEDURES

Jurisdiction

The Faculty Constitution charges the Faculty Senate with the right to delegate responsibility to and charge Faculty Committees. The Faculty Welfare and Privileges Committee (FWP) has jurisdiction over all faculty disputes pertaining to faculty termination, reappointment, evaluation, salary adjustment, sabbatical leave, fringe benefits, academic freedom, and other areas of personnel policy and conditions of faculty employment.

All Faculty members are within the jurisdiction of and are subject to the procedures of the FWP ~~Faculty Welfare and Privileges Committee~~.

The procedures for termination of a faculty member's employment are different from the procedures for other disputes. Termination procedures ~~grow out of and~~ are derived from and governed by the termination policy set forth in the Faculty Handbook, Section 4 IV. They are set forth in "Termination Procedures," Section I below.

The procedures for handling all other disputes within the jurisdiction of the FWP Committee on Faculty Welfare and Privileges are specified in "Mediation and Hearing Procedures," Section II below. The FWP Faculty Welfare and Privileges Committee may refuse to consider a complaint in two instances:

1. if the Committee determines that the issue is not in its purview;
2. if the matter under dispute is deemed insubstantial by a majority of the Committee after the Initiator(s) has(have) followed the steps outlined in Section II-C.

I. Termination Procedures – NOTE: NO CHANGES PROPOSED

II. Mediation and Hearing Procedures

A. Definitions

For the purposes of Faculty Welfare and Privileges Committee (FWP) procedures as outlined below, the following words have these specific meanings:

1. A **Complaint** is any question within the jurisdiction of the ~~Faculty Welfare and Privileges Committee~~ FWP brought by a Faculty member for mediation or hearing. Note that a "Complaint" is not the same as a "grievance." A grievance is an alleged violation of the AAUP bargaining agreement and is pursued through the AAUP Grievance Procedure.
2. **Mediation** refers to the specific steps in B-2 below for resolution of faculty Complaints.

3. **Hearing** refers to the specific steps in C below for the hearing and investigation of faculty Complaints after the failure of Mediation.
4. **Faculty** refers to all voting and non-voting Faculty members as defined by the Faculty Constitution, I, Section I.
5. **The Committee** refers to the Faculty Welfare and Privileges Committee (FWP).
6. **Initiator** refers to a Faculty member who brings a Complaint to the Committee.
7. **Respondent** refers to Faculty member(s), including administrators, against whom a Complaint is brought by Initiator(s).
8. **Party** refers to either Initiator(s) of or Respondent(s) to a Complaint.
9. **Hearing Panel** refers to the Committee members selected to hear a particular Complaint.
10. **Working Day** refers to the days when the University conducts regular business, normally Monday through Friday and excluding all University holidays. Winter and Summer session days are included. To count Working Days, Parties exclude the day of the receipt of materials or notice requiring response.
11. **Designated Dean** refers to the Dean of the College who is serving as the recipient of the Hearing Panel's advisory opinion and author of the decision under Section C.7. This person will have been on regular appointment as Dean for at least one year. The Designated Dean shall rotate each academic year commencing on September 1, 1997. The first Designated Dean shall be the Dean of the School of Agriculture and this position shall pass at the beginning of each academic year to successive eligible deans in alphabetical order of the colleges. If a Designated Dean is unable to serve because of unavailability, an actual or perceived conflict of interest or incapacity, then the Designated Dean for that Hearing shall be the Dean who is slated to be the successor to the then current Designated Dean.

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B. Procedures

1. General Provisions
 - a. All Faculty may avail themselves of these procedures.
 - b. All Parties to a Complaint before the Committee must comply with the Committee's procedures. In particular, all Parties must attend and participate fully in any duly scheduled Committee Hearings on the Complaint to which they are Parties, unless they are excused from attending in accordance with C-4-b below.
 - c. A Party's failure to attend or participate fully in a duly scheduled Committee Hearing constitutes a violation of the obligations of Faculty at the University of Delaware and will result in such sanctions as the administration deems appropriate. d. A Party's failure to comply with a provision of Committee procedures will result in that Party's loss of those rights provided by that part of the procedure (for example, documents not submitted within specified time limits will not be admitted as evidence at the Hearing). One Party's failure to comply with Committee procedures does not abrogate the other Party's responsibility to comply.
 - d. Parties engaged in a Hearing (Section C below) may enlist the help of any employee of the University of Delaware, except those serving on FWP Committee and those employed in the Office of the General Counsel, who shall act as an advisor (Section C-2-a-ii below). In

cases of non-renewal or termination of employment, or other cases the Committee deems appropriate, ~~a the Committee may allow the Party's Parties~~ advisor ~~may to be employed in the Office of the General Counsel~~ or any non-employee of the University of Delaware.

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2. Procedures for Mediation

- a. Before bringing a dispute to the Committee by communicating a Complaint to the Committee Chair, a faculty member is expected to have exhausted all other reasonable means of resolving the dispute, including, where appropriate, discussion with the faculty member's Chair and/or Dean.
- b. An Initiator(s) begins the Mediation process by communicating a Complaint to the Chair of the Committee. If, after discussion with the Chair, the Initiator(s) decides to withdraw the Complaint, or if the Initiator(s) and the Chair mutually agree to drop the Complaint, then the matter is closed and no record of the Complaint is kept.
- c. If the Complaint is not terminated through the discussion process in 1 above, the Initiator(s) may present a preliminary Complaint in writing to the Chair of FWP and to the person(s) against whom the Complaint is directed.
- d. The Chair shall, with the concurrence of the Committee, refer the Initiator(s) to a member of the Faculty whom the Chair has appointed to act as Mediator. ~~No member of the Committee, including the chair, may serve as a mediator in a Complaint.~~ A member of the Committee who serves as mediator in a complaint may not serve on the Hearing Panel, nor serve as an advisor, in the complaint. The Mediator shall work with the Initiator(s) and Respondent(s) to investigate the Complaint and effect a resolution agreeable to all Parties.
- e. Mediation is concluded when:
 - i. The Complaint is withdrawn; or
 - ii. The Complaint is resolved to the satisfaction of all Parties; or
 - iii. The Mediator determines that no informal resolution is possible; or
 - iv. After 30 Working Days (or after any extension agreed to by the Initiator(s), Mediator, and the Chair of FWP), the Complaint has not been resolved.
- f. Upon conclusion of Mediation, the Mediator shall report the results to the Committee within fifteen Working Days.
- g. If a majority of the Committee determines that the Complaint falls within its purview, the Chair shall advise the Initiator(s) of her/his/their right to a Hearing under Section C. If a majority of the Committee determines that the Initiator's Complaint does not fall within its purview or that the Complaint is insubstantial, then no Hearing on the matter shall be held.

C. Procedures for the Hearing

1. Preliminary Steps

- a. Written Complaint

If the Committee agrees to hear the Complaint, the Initiator(s) files with the Committee and the Respondent(s) an expanded written Complaint which

- b. specifies the charge(s), reviews the evidence, and includes the remedies sought.
Written Response

Within ten Working Days after the date that the Initiator(s) file(s) a Complaint, the Respondent(s) shall file with the Committee a Response that, at a minimum, indicates whether the Respondent(s) deny the Complaint.

- c. Pre-Hearing Meeting

Within 15 Working Days after the Initiator(s) submit the expanded written Complaint, the Chair shall conduct a short Pre-Hearing Meeting with Initiator(s) and Respondent(s). At or before this meeting, any Party may raise any questions about procedure, the scope of the Complaint, the role of advisors, or any other procedural matter. At the meeting, the Chair shall:

- i. Fix an expeditious and mutually agreeable time for the Hearing; reasonable efforts being made to schedule the Hearing within 45 Working Days of the Pre-Hearing Meeting. Such Hearing should not be scheduled for a date greater than 65 Working Days after the Pre-Hearing Meeting;
- ii. Review Hearing procedures, including the Parties' obligations, the roles of advisors and observers, the rules for submitting documentary evidence, and possible limits on the number of witnesses;
- iii. Set deadlines for submission of documentary evidence and names of witnesses to be called;
- iv. Identify advisors and observers selected by the Parties and;
- v. Tentatively name the Hearing Panel, pursuant to any Party's claims of conflict of interest under Section C-3-b or other cause for excusing a Hearing panel member.

- d. Witness Lists

Parties shall submit the names of witnesses to the Committee within the time agreed upon in section c-3 above. The Committee shall make the names available to all other Parties immediately. If the Committee decides to call additional witnesses, it will immediately communicate their names to all Parties.

- e. Documents

- i. Parties shall submit documents to the Committee at least 10 Working Days before the Hearing or lose the right to submit documents. Within 5 Working Days after receipt, the Committee shall make all documents available in the Senate office to all Parties and the Provost, and to no one else.
- ii. All documents shall be submitted in duplicate with one set being original documents if at all possible. All documents shall remain in the possession of the Committee. If original documents are in the possession of someone not a Party to the Hearing, then the

- Committee may request the submission of any such documents for the purpose of making a copy of such document which shall be regarded as if original. If original documents no longer exist, then copies may be accepted, subject to verification where possible.
- iii. All documents and correspondence received by the Committee that relate to a Hearing, or to an attempt at Mediation that precedes it, shall be made available by the Committee to the Parties to that Hearing, to the Provost, and to no one else. Parties may not remove original documents from the Senate Office, but may make and remove copies. Items made available shall be considered confidential and shall not be communicated to anyone not a Party, advisor or observer.
 - f. The time periods, deadlines and Hearing dates set forth in these procedures are to be adhered to by all Parties and the Committee. However, for good cause presented in writing by any Party or considered necessary by the Committee or Hearing Panel, reasonable extensions may be granted by the Hearing Panel.

2. The Hearing

- a. Attendance is limited to the following:
The Initiator(s) and the Respondent(s);
 - i. One advisor selected by each Initiator and one advisor selected by each Respondent. Advisors shall be employees of the University of Delaware; ~~however, employees in the Office of the General Council are prohibited from serving as advisors.~~ refer to restrictions as outlined in B-1.-d above. Keep refer to restrictions.... Please check with John C... and then include in 6a.
 - ii. One observer selected by each Initiator and one observer selected by each Respondent.
 - iii. The members of the Committee and supporting staff.
 - iv. Each witness during his/her testimony.
- b. Conduct of the Hearing
It is the responsibility of the Committee and its support staff to arrange hearing space and maintain records of the Hearing.
 - i. The Committee Chair or his/her appointed representative shall serve as Chair of the Hearing. This Chair shall call the Hearing to order, determine all procedural questions and objections raised at the Hearing, and determine the admissibility of evidence.
 - ii. All Parties, Advisors, Observers, and members of the Hearing Panel shall be identified for the record.
 - iii. The record shall include both the Initiator(s)' Complaint and the Respondent(s)' response.
 - iv. Only members of the Hearing Panel and the Parties may question a witness unless otherwise provided for pursuant to section c, below.
 - v. Each witness shall be present in the hearing room only during the time of his/her testimony and shall refrain from discussing the case

with other witnesses.

c. Statements and Questioning of Witnesses

First the Initiator(s) and then the Respondent(s) may make an opening statement.

- i. The order in which witnesses shall be heard is as follows: first the witnesses called by the Initiator(s), second those called by the Respondent(s), and third those called by the Committee.
- ii. The order in which each witness shall be questioned is as follows:
 - a. Witnesses called by the Initiator shall be questioned first by the Initiator, then by the Respondent and then by the Committee.
 - b. Witnesses called by the Respondent shall be questioned first by the Respondent, then by the Initiator and then by the Committee.
 - c. Witnesses called by the Committee shall be questioned first by the Committee, then by the Initiator and then by the Respondent.
- iii. After the Hearing Panel and the Parties have questioned a witness, members of the panel and Parties may pose additional questions at the discretion of the Chair.
- iv. After all witnesses have been questioned, first the Initiator(s) and then the Respondent(s) may make closing statements. After the closing statements, the Hearing Panel may further question the Parties.

d. Transcript of Hearing

A transcript of the Hearing shall be made available by the Committee to the Parties to that Hearing, to the Provost, and to no one else. The Parties shall not provide a copy of the transcript or show it to anyone other than their advisors, observers or legal counsel.

3. The Hearing Panel

a. Membership

The Hearing Panel shall consist of five members of the Committee unless, because of conflicts of interest as defined below b, only four Committee members are eligible.

b. Conflict of Interest

Any member of the Committee who is a member of the department or unit of the Initiator(s) or the Respondent(s) or who has a relationship of friendship, animosity, or some other nature that goes beyond mere personal acquaintance or professional association may not serve on the Hearing Panel unless otherwise agreed by all Parties.

- i. Either Party may request that any member of the Hearing Panel be excused for cause. Such a request must be made in writing to the Committee no later than five Working Days after the Pre-Hearing Meeting. The Committee shall decide whether the alleged cause justifies excusing the member and shall notify all Parties of its decision and reasons therefore at least 5 Working Days prior to the Hearing.
- ii. The Designated Dean shall not serve in adjudicating a particular Complaint if he/she has a conflict of interest as defined in section 3.b.i) above or is the Dean of the College of any Party.

4. Attendance

- a. All Parties to a Complaint before the Committee must attend and fully participate in any duly scheduled Hearings on that Complaint.
- b. The Committee may excuse a Party from attending under the following circumstances:
 - i. At least 15 Working Days prior to the Hearing, the Party notifies the Committee in writing of a significant, conflicting obligation that prevents the Party from attending; or
 - ii. At any time prior to the Hearing, the Party notifies the Committee in writing of a serious and unexpected emergency or illness that prevents the Party from attending.
- c. A Party's failure to adhere to section a above, unless excused pursuant to sections b-i or b-ii above, constitutes a violation of the obligations of Faculty at the University of Delaware and will result in such sanctions as the administration deems appropriate. In addition, at its discretion, the Committee may proceed with a Hearing in a Party's absence.
- d. If a Party is excused pursuant to sections b-i or b-ii above, the Committee shall postpone the Hearing, reset the Hearing to the earliest possible mutually agreeable date, and officially notify all Parties and witnesses of the new hearing date within five Working Days.

5. Witnesses

- a. It is the responsibility of the Parties to name their witnesses by the deadline fixed in the Parties' preliminary agreement.
- b. In the event that either the Initiator(s) or the Respondent(s) discover new witnesses after the deadline agreed upon, their names shall be provided to the Committee immediately. If the Committee determines that this discovery is legitimate, then the other Parties shall be informed of the names of the new witnesses immediately. However, all new witnesses must be identified and their names communicated to all Parties at least eight Working Days prior to the Hearing.
- c. Each witness duly notified of a Hearing is obliged to attend and fully participate in hearing procedures.
- d. The Committee may excuse a witness from attending under the following

circumstances:

- i. Within seven Working Days of the date of the witness' notice to appear, the witness notifies the Committee that he/she is unable to appear; or
 - ii. At any time prior to the Hearing, the witness notifies the Committee in writing of a serious and unexpected emergency or illness that prevents the witness from attending.
- e. If a witness fails to appear or is excused from attending under the provisions in d above, the Committee shall determine whether the Hearing shall continue as scheduled or whether, in the interests of fairness, the Hearing should be rescheduled to the earliest possible mutually agreeable date. If the Hearing proceeds as scheduled, but either Party considers the absent witness' testimony to be essential, then that Party may, at the conclusion of the Hearing, petition the Committee for a subsequent Hearing to be limited to eliciting the absent witness' testimony.
 - f. The Hearing Panel shall attempt to avoid inconveniencing witnesses by realistically scheduling the time each witness is expected to testify and by conducting the Hearing as expeditiously as is consonant with fairness and due process.
 - g. Unless excused according to d above, the failure of a witness who is a university employee to comply with sections c above constitutes a violation of his/her responsibilities as a member of the University community and will result in whatever sanctions the administration deems appropriate.

6. Advisors and Observers

- a. Except in the circumstances outlined in section ~~B-1.e~~ B.1.d above, advisors shall be employees of the University of Delaware; ~~however, employees in the Office of the General Council are prohibited from serving as advisors.~~
- b. Each advisor shall act only as an advisor unless the Hearing Panel agrees to a Party's request that his/her advisor undertake functions otherwise assigned to the Party under Section C-2-b and c above such as the presentation of opening and closing statements and the questioning of witnesses. Any such substitution by an advisor must also be agreed to by the other Party unless the Hearing Panel finds compelling reasons to agree to the substitution without the other Party's agreement. Without such agreement from the Hearing Panel, the advisor is not to take any action or make any statement either before or during the Hearing which would appear on the transcript of the Hearing.
- c. Each observer selected by a Party may only observe and may not otherwise participate in the Hearing.

7. Advisory Opinion and Final Decision

- a. Except in complaints concerning sexual discrimination or sexual harassment, the following schedule will apply:
 - i. Upon conclusion of a hearing and receipt of the hearing record, including the hearing transcript and all exhibits admitted at the hearing, the committee shall write an advisory opinion to the

- Provost, within 14 Working Days, that includes the transcript and all exhibits admitted at the hearing, the committee's conclusions about the case and any remedies the committee may recommend. These remedies are not limited to those specified by the initiator(s) in the complaint.
- ii. The committee shall provide a copy of its opinion to the Provost and to each party. The Provost will issue a decision within 45 Working Days of receipt of the opinion. The committee shall not provide a copy of, or show, its opinion to anyone else. The Provost or the parties may disclose the contents of the opinion at their discretion.
- b. When the complaint concerns sexual discrimination or sexual harassment, the following schedule shall apply:
- i. Upon conclusion of the Hearing, the Hearing Panel shall issue an advisory opinion within 14 Working Days of receipt of the Hearing record, including the Hearing transcript and all exhibits admitted at the Hearing. The advisory opinion shall be provided to the Designated Dean and the Parties, and it shall include the Committee's conclusions about the case and any remedies the Committee may recommend. The Hearing Panel shall provide the Designated Dean the entire record of the hearing along with its advisory opinion. The Designated Dean shall render to the Parties and Committee a decision within 14 Working Days of receipt of the Committee's advisory opinion and Hearing record. The remedies which may be included in the advisory opinion and decision are not limited to those specified by the Initiator(s) in the Complaint. The Committee shall not provide a copy of, or show, its opinion to anyone except for the Designated Dean and the Parties.
 - ii. Should the Initiator(s) or Respondent(s) be dissatisfied with the decision of the Designated Dean, that Party may appeal the decision to the Provost by sending the Provost and all other Parties a memorandum setting forth the objections to the decision and the basis for the objections within 14 Working Days of issuance of the decision. Any other Party may respond to the appeal by written memorandum sent to the Provost and all other Parties within 14 Working Days of receipt of a timely appeal submitted to the Provost. Should any Party not wish to respond, that Party shall inform the Provost of such in writing within the 14 Working Day response period. Should no timely appeal be taken, the decision of the Designated Dean shall become final 15 Working Days after issuance.
 - iii. Should an appeal be taken with the 14 Working Day period, the Provost shall consider the Hearing record, the advisory opinion, the decision of the Designated Dean and the appeal and responsive memoranda of the Parties. The Provost shall issue the final decision on appeal to the Parties within 45 Working Days of issuance of the decision of the Designated Dean.
 - iv. The Designated Dean, Provost and the Parties may disclose the

contents of the final decision at their discretion after the period for appeals has run.

/khs

Updated 5/2/05 Section I. Termination Procedures 1/13/1998 [Note: This document was reprinted on 1/13/98. Changes were made to section II A 11., section II B 2.f, section II C 3.b 3), section II C 7.a 1&2, b 1,2,3&4. The date that the document was created was changed from 12/11/93 to 1/13/1998 (the document was approved by the University Faculty Senate November 3, 1997).] 4/17/1998 [Note: An additional change was made to section II C 1.c.i that was approved by the University Faculty Senate November 3, 1997, but was omitted in the previous update.]

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