



UNIVERSITY OF WASHINGTON

FACULTY SENATE OFFICE
Secretary of the Faculty

3 July 2000

Richard L. McCormick, President
Office of the President
Box 351230

Subject: Class A Legislation

Dear President McCormick:

In accordance with the rules, the faculty has approved the *Faculty Code* amendments in Class A Bulletin No. 101 regarding Volume Two: Part II. Volume Two, Part II: Chapter 28:

- Section 28-31. *Definitions.*
- Section 28-32. *Cases Subject To Adjudications.*
- Section 28-33. *Adjudication Panel and Hearing Panels.*
- Section 28-35. *Time Limitations on Initiating Adjudications.*
- Section 28-36. *Manner of Initiating Adjudications.*
- Section 28-51. *Comprehensive Adjudications—Nonparty Participants.*
- Section 28-52. *Comprehensive Adjudications—Preliminary Proceedings.*
- Section 28-53. *Comprehensive Adjudication—Procedure at Hearing.*
- Section 28-61. *Review Procedures.*

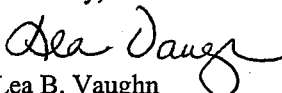
The results of the election submitted to the faculty for vote on 9 June 2000 are:

Total ballots mailed out:	2950
Total ballots returned:	712
Percent of faculty who voted:	24%
Percentage of "yes" votes:	92% (655)
Percentage of "no" votes:	3.65% (26)
Abstentions:	4.35% (31)

(The above percentage figures are based on ballots returned.)

Attached is Professor Gerry Philipsen's certification that the faculty has voted to approve the changes as proposed in Class "A" Bulletin No. 101. Before the University Handbook can be revised, we need your approval. According to the *Faculty Code*, you have 14 days to respond. We look forward to hearing from you by 17 July 2000.

Sincerely,


Lea B. Vaughn
Secretary of the Faculty

Enc.

Cc: Gerry Philipsen, Chair, Faculty Senate



University of Washington Office of the President, Box 351230

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March 13, 2000

Professor Lea B. Vaughn
Secretary of the Faculty
Box 351271

Dear Lea:

I am pleased to approve the proposal acted on by the Faculty Senate on first reading at the meeting of 2 March 2000, amending the *Faculty Code*.

Volume Two, Part II: Chapter 28:

- Section 28-31. Definitions.
- Section 28-32. Cases Subject to Adjudications.
- Section 28-33. Adjudication Panel and Hearing Panels.
- Section 28-35. Time Limitations on Initiating Adjudications.
- Section 28-36. Manner of Initiating Adjudications.
- Section 28-51. Comprehensive Adjudications—Nonparty Participants.
- Section 28-52. Comprehensive Adjudications—Preliminary Proceedings.
- Section 28-53. Comprehensive Adjudication—Procedure at Hearing.
- Section 28-61. Review Procedures.

Sincerely yours,

Richard L. McCormick
President

cc: Provost Lee L. Huntsman
Ms. Carol S. Niccolls
Dr. Steven G. Olswang
Professor Gerry Philipsen

Proposed Class "A" Legislation
Volume Two, Part II, Chapter 28,
Sections 31, 32, 33, 35, 36, 51, 52, 53, and 61
Adjudicative Proceedings for the Resolution of Differences

<u>Present Code Language</u>	<u>Proposed Language</u>
<p>This chapter sets forth the adjudicative procedures to be used in resolving disputes involving faculty members that cannot be resolved by informal means. Informal dispute resolution procedures are available at any time during the resolution process, including the time period after a hearing has been requested and before a final decision has been reached. Such procedures include the Conciliation procedure through the Ombudsman's office. The parties are strongly encouraged to use those procedures and other informal mediation procedures whenever possible.</p>	<p>(No changes)</p>
<p>The adjudicative procedures set forth in this chapter comply with the requirements of the Washington Administrative Procedure Act (Chapter 34.05 RCW). There are two types of adjudication: the Brief Adjudication, held before a Hearing Officer and used in cases that do not warrant an extended fact-finding hearing, and the Comprehensive Adjudication, which uses a Hearing Officer as well as a faculty panel, or in some cases, a faculty/student or staff panel. Results of these adjudications are ultimately appealable to the President, except for cases where the President is a party to the controversy, which are appealable to the Board of Regents. Subject to the provisions of Chapter 34.05 RCW relating to exhaustion of administrative remedies, parties shall avail themselves of these proceedings prior to seeking review beyond the University.</p>	<p>The adjudicative procedures set forth in this chapter comply with the requirements of the Washington Administrative Procedure Act (Chapter 34.05 RCW). There are two types of adjudication: the Brief Adjudication, held before a Hearing Officer and used in cases that do not warrant an extended fact-finding hearing, and the Comprehensive Adjudication, which uses a Hearing Officer as well as a faculty panel, or in some cases, a faculty/student or staff panel. Results of these adjudications are ultimately appealable to the President, except for cases where the President is a party to the controversy, which are appealable to the Board of Regents. <u>Only results of adjudications in which the President is a party to the controversy are appealable to the Board of Regents. Results of Comprehensive Adjudications in which the President is not a party to the controversy are appealable to the President. Results of Brief Adjudications in which the President is not a party to the controversy are appealable to the President only if the Brief Adjudication Review Panel reverses or amends the decision of the Hearing Officer. Results of Brief Adjudications are appealable only if the Brief Adjudication Review Panel reverses or amends the decision of the Hearing Officer. Results of brief or comprehensive adjudications in which the President is a party to the controversy are appealable to the Board of Regents. Results of adjudications in which the President is not a party to the controversy are appealable to the President.</u> Subject to the provisions of Chapter 34.05 RCW relating to exhaustion of administrative remedies, parties shall avail themselves of these proceedings prior to seeking review beyond the University.</p>
Section 28-31. Definitions	Section 28-31. Definitions
A. through F	(no changes)
	<u>H. Administrative party of right is a person, not identified</u>

<u>Present Code Language</u>	<u>Proposed Language</u>
(new subsection)	<u>in the petition, who, for good and valid reason, is a necessary party or in the adjudication by virtue of being immediately superior in administrative rank to a respondent (for example, the dean of a school or college in which a department chair is a respondent) and whose request to participate in the proceeding has been granted by the Hearing Officer. The administrative party of right shall participate as a respondent to the petition and shall have the same rights and be subject to the same responsibilities as a party.</u>
	(re-letter H-M. as appropriate)
K. <i>Faculty member</i> is any person who meets the definition of faculty member as set forth in Section 21-31 and would be eligible to invoke the adjudication procedures of this chapter for resolution of a grievance described in Section 28-32, Subsection B.	K L. <i>Faculty member</i> is any person who, <u>at the time of the decision, action or inaction being contested,</u> meets the definition of faculty member as set forth in Section 21-31 and would be eligible to invoke the adjudication procedures of this chapter for resolution of a grievance described in Section 28-32, Subsection B.
Section 28-32. Cases Subject To Adjudications	Section 28-32. Cases Subject To Adjudications
A.	(no change)
B. A faculty member may initiate an adjudication under this chapter by filing a petition for adjudication in the time and manner specified below, for resolution of a dispute which falls within one or more of the following categories:	B. A faculty member may initiate an adjudication under this chapter by filing a petition for adjudication <u>within</u> in the time <u>limitations specified in Section 28-35 and in the</u> manner specified below, for resolution of a dispute which falls within one or more of the following categories:
1. through 3.	(No changes)
Section 28-33. Adjudication Panel and Hearing Panels	Section 28-33. Adjudication Panel and Hearing Panels
A. through C.	(no change)
D. All Comprehensive Adjudications shall be heard by one Hearing Officer and a Hearing Panel composed of five members, with two exceptions:	D. All Comprehensive Adjudications <u>involving a non-party participant of right who is either a student or staff member</u> shall be heard by <u>one a</u> Hearing Officer and a Hearing Panel <u>composed of five members, with two exceptions and, except by unanimous consent of the parties to be heard by the Hearing Officer without a hearing panel, unless waived by all of the parties, a Hearing Panel composed of:</u>
<ol style="list-style-type: none"> 1. in cases involving a nonparty participant of right who is either a student or staff member, the Hearing Panel shall be composed of seven members; and 2. with the unanimous consent of the parties, the adjudication shall be heard by the Hearing Officer without a Hearing Panel 	<ol style="list-style-type: none"> 1. in cases involving a nonparty participant of right who is either a student or staff member, the Hearing Panel shall be composed of seven members; and 2. with the unanimous consent of the parties, the adjudication shall be heard by the Hearing Officer without a Hearing Panel. 1. <u>Two student members of the adjudication panel</u>

<u>Present Code Language</u>	<u>Proposed Language</u>
	<p>(in a case involving allegations by a student) or two staff members of the adjudication panel (in a case involving allegations by a staff member), and</p> <p>2. <u>Five faculty members or, with the unanimous consent of the parties, three faculty members of the adjudication panel.</u></p>
<p>E. The selection of Hearing Panel members shall be made pursuant to the following:</p>	<p>E. The selection of Hearing Panel members shall be made pursuant to the following:</p>
<p>1. In selecting members of a particular Hearing Panel, the Chair shall attempt to achieve the highest degree of diversity and impartiality and make every possible effort to select Panel members with gender, backgrounds, cultural heritage, or other factors the Chair deems relevant to the issues at hand and the persons involved. This requirement is especially important to observe in cases where unlawful discrimination is alleged. The purposes of this provision are to broaden the perspective of the Panel, increase the Panel's ability to understand the motivations of the persons involved and reduce or balance the potential for any cultural, racial or other bias that may affect the decision-making process.</p>	<p>1. In selecting members of a particular Hearing Panel, the Chair shall attempt to achieve the highest degree of diversity and impartiality and make every possible effort to select Panel members with gender, backgrounds, cultural heritage, or other factors the Chair deems relevant to the issues at hand and the persons involved. This requirement is especially important to observe in cases where unlawful discrimination is alleged. The purposes of this provision are to broaden the perspective of the Panel, increase the Panel's ability to understand the motivations of the persons involved and reduce or balance the potential for any cultural, racial or other bias that may affect the decision-making process.</p>
<p>2. For any case with a nonparty participant of right who is either a student or a staff member, the seven Hearing Panel members shall consist of five faculty members of the Adjudication Panel, and two student members of the Adjudication Panel (in a case involving allegations by a student) or two staff members of the Adjudication Panel (in a case involving allegations by a staff member).</p>	<p>2. For any case with a nonparty participant of right who is either a student or a staff member, the seven Hearing Panel members shall consist of five faculty members of the Adjudication Panel, and two student members of the Adjudication Panel (in a case involving allegations by a student) or two staff members of the Adjudication Panel (in a case involving allegations by a staff member).</p>
<p>3. Except in the case of students or staff members serving on Hearing Panels as specified above, the Hearing Panel members shall be faculty members selected from the Adjudication Panel.</p>	<p>3. Except in the case of students or staff members serving on Hearing Panels as specified above, the Hearing Panel members shall be faculty members selected from the Adjudication Panel</p>
	<p><u>All other adjudications shall be heard by one hearing officer and (except by unanimous consent of the parties to be heard by the hearing officer without a hearing panel) a hearing panel composed of five faculty members or, with the unanimous consent of the parties, three faculty members of the adjudication panel. a Hearing Officer and a Hearing Panel of five faculty members, except that with the unanimous consent of the parties the Hearing Panel may be waived or reduced to three faculty members.</u></p>

<u>Present Code Language</u>	<u>Proposed Language</u>
<p>F. The role of the Hearing Officer serving with a Hearing Panel on a Comprehensive Adjudication shall be that of administrative coordinator. The Hearing Officer shall not have a vote on the final decision of the Panel or on interim decisions of the Panel while the adjudication is pending, except as specifically noted below. The Hearing Officer shall be responsible for communications between the parties and the Panel while the adjudication is pending and shall be responsible for conducting the adjudication in compliance with the Faculty Code and any applicable law. All actions other than the final decision that are to be taken by the Panel under this chapter may be taken by the Hearing Officer if so directed by the Panel. The Hearing Officer shall make all legal rulings, as specified below, but any such rulings, including procedural decisions and interpretations of the Faculty Code or applicable law, are subject to revision or reversal by the Hearing Panel.</p>	<p>F. The role of the Hearing Officer serving with a Hearing Panel on a Comprehensive Adjudication shall be that of administrative coordinator. The Hearing Officer shall not have a vote on the final decision of the Panel or on interim decisions of the Panel while the adjudication is pending, except as specifically noted below. The Hearing Officer shall be responsible for communications between the parties and the Panel while the adjudication is pending and shall be responsible for conducting the adjudication in compliance with the Faculty Code and any applicable law. All actions other than the final decision that are to be taken by the Panel under this chapter may be taken by the Hearing Officer if so directed by the Panel. The Hearing Officer shall make all legal rulings, as specified below, but any such rulings, including procedural decisions and interpretations of the Faculty Code or applicable law, are subject to revision or reversal by the Hearing Panel.</p>
<p>(new subsection)</p>	<p><u>G. In selecting members of a particular Hearing Panel, the Chair of the Adjudication Panel shall attempt to achieve the highest degree of diversity and impartiality and make every possible effort to select Panel members with differing backgrounds that the Chair deems relevant to the issues at hand and the persons involved. This requirement is especially important to observe in cases where unlawful discrimination is alleged. The purposes of this provision are to broaden the perspective of the Panel, and increase the Panel's ability to understand the motivations of the persons involved.</u></p>
<p>G. The role of any member of a Hearing Panel, including students or staff who may serve on a Panel, shall be that of an impartial fact finder and judge and shall not be that of an advocate for any of the parties to the adjudication.</p>	<p><u>reletter to H.</u> (No changes)</p>
<p>(new subsection)</p>	<p><u>H.I. Hearing panels may, but are not required to, meet during the period of June 16 through September 15.</u></p>
<p>Section 28-35. Time Limitations on Initiating Adjudications</p>	<p>Section 28-35. Time Limitations on Initiating Adjudications</p>
<p>A. In order for the Provost to initiate an adjudication pursuant to Section 28-32, Subsection A, the Provost shall file a Notice of Request for Adjudication and a Petition in the form and manner specified in Section 28-36 within thirty days after receipt by the Provost of the written report alleging that reasonable cause exists to adjudicate charges against a faculty member; provided that in cases where the report was filed with the Provost by the University</p>	<p>(No changes)</p>

<u>Present Code Language</u>	<u>Proposed Language</u>
Complaint Investigation and Resolution Office (UCIRO), the Provost shall file the Notice of Request for Adjudication and Petition within 45 days after receipt by the Provost of such report.	
B. In order for a faculty member to initiate an adjudication pursuant to Section 28-32, Subsection B, the faculty member shall file a Notice of Request for Adjudication and a Petition in the form and manner specified in Section 28-36, and no later than the last day of the faculty member's current appointment, and within:	B. In order for a faculty member to initiate an adjudication pursuant to Section 28-32, Subsection B, the faculty member shall file a Notice of Request for Adjudication and a Petition in the form and manner specified in Section 28-36, and no later than the last day of the faculty member's current appointment, and within:
1. One hundred and twenty days after the faculty member has received notice of the action, decision or inaction that gives rise to the faculty member's right to an adjudication under Section 28-32, Subsection B; or	1. One hundred and twenty days <u>Ninety days</u> after the faculty member has received notice of the action, decision or inaction that gives rise to the faculty member's right to an adjudication under Section 28-32, Subsection B; or
2. One hundred and twenty days after the faculty member has discovered or reasonably should have discovered the action, decision or inaction or the underlying facts regarding such action, decision or inaction that gave rise to the faculty member's right to adjudication, if later than Subsection B.1. Notwithstanding the foregoing, the time periods specified in Subsection B.1 and B.2 above shall be suspended during the period of June 16 through September 15 if the faculty does not include such period.	2. One hundred and twenty days <u>Ninety days</u> after the faculty member has discovered or reasonably should have discovered the action, decision or inaction or the underlying facts regarding such action, decision or inaction that gave rise to the faculty member's right to adjudication, if later than Subsection B.1. Notwithstanding the foregoing, the time periods specified in Subsection B.1 and B.2 above shall be suspended during the period of June 16 through September 15 if the faculty <u>member's contract</u> does not include such period.
C. Notwithstanding Subsections A and B of this section, if the parties choose to engage first in informal dispute resolution proceedings, such as mediation or the conciliatory proceedings as described in Chapter 27, and such proceedings are commenced within the time limits required above for commencement of an adjudication, then the time limits required in this section for commencement of an adjudication shall be suspended until such informal dispute resolution proceedings are completed. If the informal dispute resolution proceedings do not resolve the dispute, then an adjudication must be initiated within 30 days of the conclusion of such proceedings.	C. Notwithstanding Subsections A and B of this section, if the parties choose to engage first in informal dispute resolution proceedings, such as mediation or the conciliatory proceedings as described in Chapter 27, and such proceedings are commenced within the time limits required above for commencement of an adjudication, then the time limits required in this section for commencement of an adjudication shall be suspended until such informal dispute resolution proceedings are completed. If the informal dispute resolution proceedings do not resolve the dispute, then an adjudication must be initiated within 30 days of the conclusion of such proceedings. <u>A party initiating an adjudication shall provide written notice to the Secretary of the Faculty of the dates of the beginning and conclusion of any informal dispute resolution proceeding.</u>
D. . . .	(No changes)
Section 28-36. Manner of Initiating Adjudications	Section 28-36. Manner of Initiating Adjudications
A.	(No changes)

<u>Present Code Language</u>	<u>Proposed Language</u>
<p>B. Any party against whom relief is sought shall respond to the Petition by filing a Response, which sets forth which facts of the Petition are accepted and which are contested and any further assertions of fact or reasons why the relief requested should not be granted. The Response shall be filed with the Secretary of the Faculty within 30 days of receipt of the Notice, Petition and Summary. The Secretary of the Faculty shall deliver complete copies of the Response within seven days of receipt to all persons listed on the Summary who have received copies of the Notice and Petition. Notwithstanding the foregoing, the time period for filing the Response shall be suspended upon commencement of informal dispute resolution proceedings after the filing of the Notice and Petition but before the due date of the Response. In the event that informal dispute resolution proceedings have been initiated, the Ombudsman or such other person who has been requested to conduct the informal dispute resolution proceeding shall notify the Chair of the Adjudication Panel. If the informal dispute resolution proceedings terminate without resolving the dispute, the Response shall be due on the later of ten days after the termination of such proceedings and the expiration of the original 30-day period for filing the Response excluding the days during which the conciliation proceeding was open.</p>	<p>(no change)</p> <p>In the event that informal dispute resolution proceedings have been initiated, the Ombudsman or such other person who has been requested to conduct the informal dispute resolution proceeding shall notify <u>provide written notice to the Chair of the Adjudication Panel and to the Secretary of the Faculty.</u> If the informal dispute resolution proceedings terminate without resolving the dispute, the Response shall be due on the later of ten days after the termination of such proceedings and the expiration of the original 30-day period for filing the Response excluding the days during which the conciliation proceeding was open.</p>
<p>Section 28-51. Comprehensive Adjudications -- Nonparty Participants</p>	<p>Section 28-51. Comprehensive Adjudications -- Nonparty Participants</p>
<p>New Subsection</p>	<p><u>A. The Hearing Officer may grant a petition filed at any time for participation as an administrative party of right upon determining that the petitioner is a necessary participant in the adjudication party or by virtue of being immediately superior in administrative rank to the respondent. Such person's status as an administrative party of right shall commence only upon issuance of an order from the Hearing Officer allowing such person's participation.</u></p>
<p>A. & B.</p>	<p>(Re-lettered as appropriate. No other changes.)</p>
<p>Section 28-52. Comprehensive Adjudications - Preliminary Proceedings</p>	<p>Section 28-52. Comprehensive Adjudications - Preliminary Proceedings</p>
<p>(Portions of Section D moved to Section A)</p>	<p><u>D. A. At the request of any party or on the Panel's own motion at any time after the response has been received, the Hearing Panel may determine that the adjudication or a particular claim or issue material to the adjudication should be resolved by Summary Disposition without a fact-finding hearing.</u></p>

Present Code Language

Proposed Language

1. If the answering party alleges or the Panel preliminarily concludes that the Petition does not present a controversy that entitles the petitioner to a hearing when all factual allegations are viewed in the light most favorable to the petitioner, the Panel shall give notice to the parties and any nonparty participants

that a hearing will be held no sooner than ten days thereafter to determine whether the petition should be dismissed for failure to state a claim subject to adjudication. At the hearing, the parties (and any nonparty participant to the extent allowed by the Hearing Officer and Panel) shall be entitled to make offers of proof by affidavit or otherwise and to present written and oral argument concerning the proper interpretation and scope of Section 28-32. The Panel shall issue a decision to grant or deny summary disposition within five days after the hearing. If summary disposition is granted the Panel shall dismiss the petition and issue a decision pursuant to Section 28-54.

1. If the answering party alleges or the Panel preliminarily concludes that the Petition does not present a controversy under Section 28-32 that entitles the petitioner to a hearing when all factual allegations are viewed in the light most favorable to the petitioner, the Panel shall give notice to the parties and any nonparty participants of a) the deadline for submission of written offers of proof by affidavit or otherwise, and for submission of argument, and b) at the Panel's option, a hearing concerning the proper interpretation and scope of Section 28-32. ~~that a hearing will be held no sooner than ten days thereafter to determine whether the petition should be dismissed for failure to state a claim subject to adjudication. At the hearing, the parties (and any nonparty participant to the extent allowed by the Hearing Officer and Panel) shall be entitled to make offers of proof by affidavit or otherwise and to present written and oral argument concerning the proper interpretation and scope of Section 28-32.~~ The Panel shall issue a decision to grant or deny summary disposition within five days after the submission of the written materials or the conclusion of ~~after the~~ any hearing. If summary disposition is granted the Panel shall dismiss the petition and issue a decision pursuant to Section 28-54.

A. As soon as possible after appointment, the Hearing Officer and Hearing Panel shall review the pleadings filed, identify the issues and discuss an initial plan for the conduct of the hearing. Such plan shall include the preliminary determination of the extent to which any nonparty participant will be allowed to participate. The Hearing Officer and Hearing Panel shall immediately consult with the parties and any nonparty participants as to a convenient time and place to hold the Prehearing Conference.

A B.

(no changes)

B. Within ten days after appointment of the Hearing Panel, the Hearing Officer, at the direction of the Hearing Panel, shall prepare and deliver to the Hearing Panel, the parties and nonparty participants a Notice of Prehearing Conference, specifying the time and place of the Prehearing Conference. Such notice shall inform the parties as to the Hearing Officer's and Panel's initial plan for the hearing and preliminary determinations, such as the extent of participation rights of nonparty participants and identification of issues, including all issues that the Hearing Officer and Panel view as uncontested or irrelevant to resolution of the dispute. Such notice may further identify the evidence, including documents and witness testimony, that the Hearing Officer and Panel consider necessary at the hearing. The Prehearing Conference shall be held no later

B C.

(no changes)

<u>Present Code Language</u>	<u>Proposed Language</u>
than 20 days after appointment of the Hearing Panel.	
<p>C. All parties and nonparty participants and their legal counsel (if otherwise allowed) shall be entitled to be present at the Prehearing Conference. The Hearing Officer and the entire Hearing Panel shall also be present. The Hearing Officer shall preside over the Prehearing Conference. At the Prehearing Conference, the Hearing Officer, the Panel and the parties shall discuss and agree upon the evidence to be presented and the issues to be addressed at the hearing. The Hearing Officer, the Panel and the parties shall also agree upon any issues that can be settled by the parties before the hearing, or are uncontested or irrelevant to the adjudication, provided that if the parties cannot reach agreement on these matters the decision of the Panel shall control. The Hearing Officer, Panel, and the parties shall also discuss the feasibility of informal dispute resolution procedures to attempt settlement of the dispute before the hearing. If the parties agree to informal dispute resolution procedures, then the adjudication process shall be suspended while such procedures are pursued. Any nonparty participants present at the Prehearing Conference shall be allowed to participate in the discussion and the decision making to the extent determined by the Hearing Officer and Hearing Panel.</p>	<p>€ <u>D.</u></p> <p>(no changes)</p>
<p><u>D.</u> At the request of any party or on the Panel's own motion at any time after the response has been received, the Hearing Panel may determine that the adjudication or a particular claim or issue material to the adjudication should be resolved by Summary Disposition without a fact-finding hearing.</p>	<p>(now Section A)</p>
<p>1. If the answering party alleges or the Panel preliminarily concludes that the Petition does not present a controversy that entitles the petitioner to a hearing when all factual allegations are viewed in the light most favorable to the petitioner, the Panel shall give notice to the parties and any nonparty participants that a hearing will be held no sooner than ten days thereafter to determine whether the petition should be dismissed for failure to state a claim subject to adjudication. At the hearing, the parties (and any nonparty participant to the extent allowed by the Hearing Officer and Panel) shall be entitled to make offers of proof by affidavit or otherwise and to present written and oral argument concerning the proper interpretation and scope of Section 28-32. The Panel shall issue a decision to grant or deny summary disposition within five days after the hearing. If summary disposition is granted the Panel shall dismiss the petition and issue a decision pursuant to Section 28-54.</p>	<p>(now Section A)</p>

<u>Present Code Language</u>	<u>Proposed Language</u>
<p>2.If a party alleges or the Panel preliminarily concludes that the entire adjudication or a particular claim or issue material to the adjudication does not present a factual dispute and that a fact-finding hearing is not necessary to enable the Panel to make a decision on the matter, the Panel shall give notice to the parties and any nonparty participants that a hearing will be held no sooner than ten days thereafter to determine whether the adjudications or particular claims should be resolved summarily. At the hearing, the parties (and any nonparty participant to the extent allowed by the Hearing officer and Panel) shall be entitled to make offers of proof by affidavit or otherwise and to present written and oral argument concerning whether a factual controversy exists between the parties. The Panel shall issue a decision to grant or deny complete or partial summary disposition within five days after the hearing. If complete summary disposition is ordered, the Panel shall issue a decision on the merits of the controversy pursuant to Section 28-54. If partial summary disposition is ordered, the Panel shall incorporate in its Prehearing Order the facts found not to be in dispute between the parties.</p>	<p>2.If a party alleges or the Panel preliminarily concludes that the entire adjudication or a particular claim or issue material to the adjudication does not present a factual dispute and that a fact-finding hearing is not necessary to enable the Panel to make a decision on the matter, the Panel shall give notice to the parties and any nonparty participants that a hearing will be held no sooner than ten days thereafter to determine whether the adjudications or particular claims should be resolved summarily. At the hearing, the parties (and any nonparty participant to the extent allowed by the Hearing officer and Panel) shall be entitled to make offers of proof by affidavit or otherwise and to present written and oral argument concerning whether a factual controversy exists between the parties. The Panel shall issue a decision to grant or deny complete or partial summary disposition within five days after the hearing. If complete summary disposition is ordered, the Panel shall issue a decision on the merits of the controversy pursuant to Section 28-54. If partial summary disposition is ordered, the Panel shall incorporate in its Prehearing Order the facts found not to be in dispute between the parties.</p>
E. through K.	(No changes)
<p>Section 28-53. Comprehensive Adjudication - Procedure at Hearing</p>	<p>Section 28-53. Comprehensive Adjudication - Procedure at Hearing</p>
<p>A. In both open and closed proceedings before a Hearing Officer and Hearing Panel the following persons are entitled to be present:</p>	(No changes)
<p>1. The parties and nonparty participants of right, and their advisors and representatives, to the extent advisors and representatives are allowed under the other terms of this chapter.</p>	<p>1. The parties and nonparty participants of right and their advisors and representatives, to the extent advisors and representatives are allowed under other terms of this chapter, <u>Advisors may be present but may not speak on behalf of the parties in the proceedings unless agreed to by both parties.</u></p>
<p>2. Any permissive nonparty participants and their advisors and representatives, if allowed by the Hearing Officer or the Hearing Panel.</p>	<p>2. Any permissive nonparty participants and their advisors and representatives, if allowed by the Hearing Officer or the Hearing Panel.</p>
<p>3. The Hearing Officer, the Hearing Panel members and a secretary or recorder.</p>	<p>3. <u>2.</u></p>
<p>4. Persons serving in an advisory capacity to the Panel,</p>	<p>4. <u>3.</u></p>

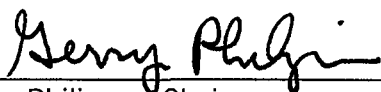
<u>Present Code Language</u>	<u>Proposed Language</u>
unless their presence is objected to for cause by either party and the Panel sustains the objection.	
5. Witnesses and their advisors, except that the Hearing Officer may upon a showing of good cause, as specified in the record of the proceeding, exclude witnesses and their advisors from the hearing room except while testifying.	5. 4.
6. Such other persons as specifically authorized by the Hearing Officer or the Panel, unless their presence is objected to by either party and the objection is sustained.	6. 5.
B. through G.	(No changes)
Section 28-61. Review Procedures	Section 28-61. Review Procedures
A. A decision of a Hearing Officer in a brief adjudication shall be submitted to the Brief Adjudication Review Panel ("Review Panel"), which shall be a standing committee consisting of members of the Adjudication Panel, appointed by the Chair. If the Review Panel takes no action and no party to the adjudication has filed a petition for review of the Hearing Officer's decision within 21 days of issuance of the decision, then the decision shall become final.	A. A decision of a Hearing Officer in a brief adjudication shall be submitted to the Brief Adjudication Review Panel ("Review Panel"), which shall be a standing committee consisting of members of the Adjudication Panel, appointed by the Chair. If the Review Panel takes no action and no party to the adjudication has filed a petition for review of the Hearing Officer's decision within 21 days of issuance of the decision, then the decision shall become <u>the final decision of the University.</u>
If a party files a petition for review or the Review Panel elects to review the decision, all parties shall receive notice of such review. The Review Panel shall exercise all the decision making power that it would have had to decide and enter the decision had the Review Panel presided over the hearing, except to the extent that the issues subject to review are limited by a provision of law or by the Review Panel upon notice to all the parties. In reviewing findings of fact by the Hearing Officer, the Review Panel shall give due regard to the Hearing Officer's opportunity to observe the witnesses. The Review Panel shall afford each party an opportunity to present written argument and may afford each party an opportunity to present oral argument. The Review Panel shall complete its review within 20 days of the decision to review and shall enter a final order disposing of the adjudication or remand the matter for further proceedings, with instructions to the Hearing Officer who entered the initial decision. The order shall include a description of any judicial or other review that may be available. Upon remanding a matter, the Review Panel shall order such temporary relief as is authorized and appropriate.	If a party files a petition for review or the Review Panel elects to review the decision, all parties shall receive notice of such review. The Review Panel shall exercise all the decision making power that it would have had to decide and enter the decision had the Review Panel presided over the hearing, except to the extent that the issues subject to review are limited by a provision of law or by the Review Panel upon notice to all the parties. In reviewing findings of fact by the Hearing Officer, the Review Panel shall give due regard to the Hearing Officer's opportunity to observe the witnesses. The Review Panel shall afford each party an opportunity to present written argument and may afford each party an opportunity to present oral argument. The Review Panel shall complete its review within 20 days of the decision to review and shall enter a final order disposing of the adjudication or remand the matter for further proceedings, with instructions to the Hearing Officer who entered the initial decision. The order shall include a description of any judicial or other review that may be available. Upon remanding a matter, the Review Panel shall order such temporary relief as is authorized and appropriate.
(new subsection)	<u>If no party to the adjudication has filed a petition for review of the Review Panel's final order within 21 days of the mailing of the order to the parties, the order shall become the final decision of the University. Only a final order of the Review Panel that reverses or amends the decision of</u>

<u>Present Code Language</u>	<u>Proposed Language</u>
	<u>the Hearing Officer may be appealed to the President. Any such appeal shall proceed under the procedures of Section 28-61.B.</u>
<p>B. Any order of a Hearing Panel in a comprehensive adjudication, other than cases where the President is a party in the case, shall become a final decision of the University unless either party files an appeal to the President within 21 days of the date of mailing of the decision to the parties, or unless the President elects to review the decision by giving written notice of intent to review to the parties within 21 days of the date of delivery of the decision to the President. The presidential review shall include consideration of the written record. The President may request the parties to submit additional written arguments on particular issues and may request oral argument from the parties. To the extent that parties are asked to provide written documents, nonparty participants of right shall also have the opportunity to provide written documents and, at the discretion of the President, nonparty participants of right may be allowed to give oral arguments. No new evidence shall be considered by the President.</p>	(no change)
<p>Within 60 days of commencement of the review, unless in the President's discretion more time is necessary to consider additional arguments, the President shall make one of the following determinations:</p> <p>(1) affirm the Panel's decision; or</p> <p>(2) remand for further proceedings.</p>	(no change)
<p>Any decision of the President to remand must be based on findings of the President that the decision of the Panel was arbitrary or capricious; the procedures followed by the Panel in reaching its decision were materially and prejudicially unfair or not in accordance with the law or University rules or regulations; and/ or the review in which he or she has engaged has revealed the importance of evidence which the Panel did not adequately consider.</p>	(no change)
<p>The Panel then has 30 days to reconsider its decision and the reasons given by the President for remand, and to report back to the President its decision on remand. The President shall then affirm, reverse or amend the Panel's decision on remand. Any decision of the President to reverse or amend must be based on findings that the Panel's decision was:</p> <p>(1) not supported by a preponderance of the evidence in the record, or</p> <p>(2) was arbitrary or capricious, or</p> <p>(3) the procedures followed were materially and prejudicially unfair or in violation of law or University rules.</p>	(no change)

<u>Present Code Language</u>	<u>Proposed Language</u>
<p>Upon a decision by the President to affirm, reverse or amend the decision of the Panel, the adjudication will be deemed closed.</p>	<p>Upon a <u>A</u> decision by the President to affirm, reverse or amend the decision of the Panel, the adjudication will be deemed closed <u>is a final decision of the University.</u></p>
<p>C. Any order of a Hearing Panel in a case where the President is a party in the case shall become a final decision of the University unless either party files an appeal to the Board of Regents within 21 days of the date of mailing of the decision to the parties or unless the Board of Regents elects to review the decision by giving written notice of intent to review to the parties within 21 days of the date of delivery of the decision to the Board of Regents. The Board of Regents review shall include consideration of the written record. The Board of Regents may request the parties to submit additional written arguments on particular issues and may request oral argument from the parties. To the extent that parties are asked to provide written documents, nonparty participants of right shall also have the opportunity to provide written documents and, at the discretion of the president, non-party participants of right may be allowed to present oral arguments. No new evidence shall be considered by the Board of Regents.</p>	<p>(no change)</p>
<p>Within 60 days of commencement of the review, unless in the Board's discretion more time is necessary to consider additional arguments, the Board shall make one of the following determinations:</p> <ol style="list-style-type: none"> (1) affirm the Panel's decision; (2) reverse or amend the Panel's decision; or (3) remand for further proceedings. <p>Any decision of the Board of Regents to reverse, amend, or remand must be based on findings of the Board that the decision of the Panel was arbitrary or capricious; the procedures followed by the Panel in reaching its decision were materially and prejudicially unfair or not in accordance with the law of University rules or regulations; and/or the review in which he or she has engaged has revealed the importance of evidence which the Panel did not adequately consider. Any decision to reverse or amend without remand for further proceedings must include a finding that, and explanation as to why, further proceedings are not advisable. In the event the Board's decision is to affirm, reverse or amend the decision of the Panel, the adjudication will be deemed closed.</p>	<p>C.</p> <p>(no change)</p> <p>(no change)</p> <p>In the event the Board's decision is <u>A decision by the Board</u> to affirm, reverse or amend the decision of the Panel, the adjudication will be deemed closed <u>is a final decision of the University.</u></p>
<p>D. If upon review a decision is remanded to the Panel for further proceedings, the Panel shall have 30 days within which to hold such further proceedings as are necessary to comply with the directions from the President (or the Board of Regents) and to respond to the President's (or Board of Regents') action with the results of its reconsideration of the case. Upon receipt of the Panel's reconsidered decision, the President or Board of Regents shall have 30 days to make a</p>	

<u>Present Code Language</u>	<u>Proposed Language</u>
<p>final determination of the case. In the event that the President or Board of Regents decides to reverse or amend the reconsidered decision of the Panel, the final decision shall state the basis of such decision, including specific findings as to why the decision of the Panel was arbitrary or capricious, or why the procedures followed by the Panel in reaching its decision were materially and prejudicially unfair or not in accordance with the law or University rules or regulations.</p>	<p>(No changes)</p>
<p>E. Copies of all decisions, opinions, conclusions, instructions, and other written communications issued in the review process shall be sent to all parties, nonparty participants, the Chair of the Adjudication Panel, the Chair of the Faculty Senate, and the Ombudsman for the information of the Conciliation Board, as soon as the decision becomes final.</p>	<p>(No changes)</p>
<p>F. Within ten days after an order has become a final order by failure of a party or reviewing body to commence an appeal, or within ten days after a final order has been served on the parties, whichever is applicable, any party may file a petition for reconsideration.</p> <p>Such petition shall be filed with the person or persons issuing the final order and the Secretary of the Faculty and shall be served on all parties.</p> <p>Such petition shall set forth the grounds upon which relief is requested. The petition shall be disposed of by the same person or persons issuing the order, if reasonably available. The disposition shall be in the form of a written order denying the petition, granting the petition and dissolving or modifying the final order, or granting the petition and setting the matter for further hearing. The petition is deemed denied if within 20 days from the date the petition is filed the person or persons issuing the final order have not disposed of the petition or served the parties with notice specifying a date of disposition of the petition, and the Secretary of the Faculty has confirmed that the person or persons issuing the final order do not intend to act on the petition.</p>	<p>F. Within ten days after an order has become a final order by failure of a party or reviewing body to commence an appeal, or within ten days after a final order has been served on the parties, whichever is applicable, any party may file a petition for reconsideration.</p> <p><u>Any party may file a petition for reconsideration or clarification within ten days after the mailing of the following: a final decision of the President under Section 28-61, Subsection B, or a final decision of the Board under Section 28-61, Subsection C. Such petition shall be filed with the person or persons issuing the order or decision and the Secretary of the Faculty and shall be served on all parties. The filing of such petition suspends the time limitations for filing for further administrative review or for judicial review, if available. Such petition shall set forth the grounds upon which relief is requested. The petition shall be disposed of by the same person or persons issuing the order or decision, if reasonably available. The disposition shall be in the form of a written order denying the petition, granting the petition and dissolving or modifying the final order or decision, or granting the petition and setting the matter for further hearing. The petition is deemed denied if within 20 days from the date the petition is filed the person or persons issuing the final order or decision have not disposed of the petition or served the parties with notice specifying a date of disposition of the petition, and the Secretary of the Faculty has confirmed that the person or persons issuing the final order or decision do not intend to act on the petition.</u></p>


CERTIFIED AS APPROVED:



Gerry Philipson, Chair
Faculty Senate

Date: July 3, 2000

APPROVED:



Richard L. McCormick
President

Date: July 10, 2001