

**University of Washington
Faculty Council on Faculty Affairs**

May 12th, 2015
11:00am – 12:30pm
142 Gerberding

Meeting Synopsis:

1. Call to Order
 2. Approval of the Agenda
 3. Approval of the Minutes from April 28th, 2015
 4. Discussion of changes to Chapter 28 of the faculty code / Adjudications
 5. Salary policy discussion
 6. Good of the Order
 7. Adjourn
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1) Call to order

Janes called the meeting to order at 11:03 a.m.

He explained that though FCFA had approved changes to be made to Chapter 26 of the Faculty Code (RCEPs) in the last council meeting, it is too late in the 2014-2015 academic year to pass on the changes as legislation to the SEC and Faculty Senate. The legislation will be forwarded to the SEC in the fall of 2015.

2) Approval of the Agenda

The agenda was approved as written.

3) Approval of the Minutes from April 28th, 2015

The minutes from April 28th, 2015 were approved unanimously as written.

4) Discussion of changes to Chapter 28 of the faculty code / Adjudications

Marcia Killien (Secretary of the Faculty) noted that the revisions to be proposed for the faculty code in Chapter 28 (adjudications) are not finalized, though the council may use today's meeting to begin discussing the revisions and gain some background. Killien explained she has invited Jed Bradley (Assistant to the Secretary of the Faculty, Faculty Senate and Governance Office) to be present in today's meeting to provide insight into the adjudication process and the associated code language, as he works directly with the panels.

Killien explained that a meeting with university stakeholders took place in the summer of 2014 including herself, Cheryl Cameron (VP for Academic Personnel), the President, the chair of the Adjudications

Panel, the Provost, and two members of the Washington State Attorney General's office. She noted this group met to consider changes to code language in Chapter 28 of the faculty code, and the changes brought to the council today are (more or less) the result of that meeting.

The tentative changes presented for Chapter 28 of the faculty code were:

*Proposed changes **Section 28.33***

- 1) Restricting appointments to the Adjudication Panel to voting or emeritus faculty. Non-voting faculty may not have the institutional experience or scheduling availability to serve on panels. Emeritus faculty have been voting faculty in good standing at the time of retirement and may lend valuable perspectives to the panel. There is no history of non-voting faculty ever being appointed to the adjudication panel, and some members retire during their term and are willing to complete their terms while on emeritus status. As is currently the case, all members nominated by the SEC must be confirmed by the Senate.
- 2) Appointing staff or student members to the Adjudication Panel only when a case involving a student or staff member is filed. There is no record of any adjudications proceeding with student or staff in the past xx years, so requiring regular appointment of these members is an unnecessary use of time and resources. In the case where such appointments are appropriate, the process remains the same.
- 3) Allowing the appointment of a Vice-chair of the Adjudication Panel. This person would be able to serve in the place of the Chair in the chair's absence or conflict of interest.
- 4) Restricts hearing officers to attorneys who are not members of the UW faculty. There is no record of current employees of the University faculty or staff having been appointed as hearing officers and explicitly restricting the appointment to individuals external to the UW limits potential conflicts of interest.
- 5) Reduces the typical size of the hearing panel from 5 members to 3. Scheduling hearings with five members is often challenging and prolongs the adjudication process. At the request of one of the parties, the size of the panel can be expanded to five.

*Council feedback **Section 28.33** (numbered items correspond to changes listed above)*

- 1) In discussing the proposed change, the consensus of the council was that this change is reasonable and well-advised, as allowing emeritus faculty to sit on the panel will yield a larger swathe of potential members to choose from, and emeritus faculty often have more time and energy to devote to extracurricular activities. The council only advised that the amount of emeritus faculty who may serve on the adjudication panel be defined somewhere, as the panel should not only or overwhelmingly be composed of emeritus faculty.
- 2) Killien explained to the council that - supplementary to the noted changes in this section of code, point B.3 has been cut and replaced in the proposed code by points D.2 and D.3 - because the "Office of Staff Personnel" no longer exists. After discussion, the council agreed that student and staff members should be appointed on a case-by-case basis. The council only questioned if the process should be tooled in a way where an undergraduate student would be appointed to serve for a hearing wherein an undergraduate student was involved (a jury of peers, etc.), and the same for graduate students. Killien noted the process for appointment of non-party appointments needs to be figured out still.
- 3) The council agreed with the proposed change and had no substantive feedback.

- 4) The council agreed with the proposed change. A decision was made to include language that states “no University of Washington employee” shall serve as a hearing officer, as the council approved it as a conflict of interest.
- 5) Killien explained to the council that these three appointed members to the panel will be faculty, and none will be appointed belonging to units involved in the hearing. The council held an informal vote on the proposed change, and all members voted in favor of changing the default number of hearing panel members to three, from the previous five.

Proposed changes Section 28.35

- 1) The change (in C.) clarifies that time limits are suspended only for the specific informal dispute resolution processes of mediation or conciliation. These are the only processes for which specific records of initiation and termination dates are kept and thus can be documented. Informal discussions among parties or with the Ombud would not be included in the mandatory suspension of the time limits, although the parties retain the right (described in D) to specifically argue that time limits be suspended on the grounds of a gross injustice. Adding the term “specifically” to D. clarifies that the burden to argue a gross injustice rests with the party bringing the adjudication.

Council feedback Section 28.35

- 1) There were no concerns from the council on the proposed change, and there was consensus that the change was warranted.

End of discussion

Janes decided the discussion on changes to Chapter 28 of the faculty code will be paused until the next meeting given time constraints. He noted when the council resumes, they will continue discussion on Chapter 28 (adjudications), beginning on Section 28.36, where they left off.

5) Salary policy Discussion

Janes noted revisions to the existing salary policy proposal have been brought to the council for consideration in today’s meeting, and explained the changes.

College-level Customization

Original Proposal: A dean or chancellor may request authorization to use a different percentage for tier raises for one or more departments. The provost may approve, deny, or modify the proposed change.

Suggested Change: The code should explicitly allow for any college, school, or campus to develop its own formulas for each of the dollar amounts in the policy: tier raises, promotion raises, and market adjustments. These customizations would be limited to no less than 30% nor more than 150% of the university-wide defaults established by the president through executive order. The process for developing such a formula should begin with a consultation between the dean or chancellor and the elected faculty council to develop appropriate formulas (or to change existing ones temporarily or

permanently). Then the proposed formulas, together with the financial justification for them, are publicized to the faculty of the college, school, or campus for a set period of time, after which the faculty are given an opportunity to vote. If the proposal receives a majority vote, then the provost has an opportunity (within a set period of time, and after consulting with SCPB) to veto the proposed formulas on the basis of financial feasibility or equity.

Council feedback on College-level Customization

After substantive discussion, Janes noted he feels the council consensus is a feeling of dubiousness over the noted customization change.

Members noted the attraction of the previous version was that having a stable, predictable salary policy will provide encouragement for faculty to come teach at the UW, and that with so much potential for variables in the final amounts, this revision produces a policy that no longer accomplishes the same feat.

Members also noted they thought the “off ramps” included in the previous policy were intended to be enough for units who required more customization than was available. The council also noted concerns over faculty serving as the chair of a department, but potentially not being tier eligible, and yet being a player in the customization process.

Additional discussion surrounded issue with the ability of departments to reduce final amounts, and that adjusting rates may possibly yield discrimination claims. Similar uncertainties were expressed for very high amounts being opted for by departments, given the relation to sustainability.

Performance Review Process

Current Proposal: Collegial performance reviews, carried out for each individual approximately every four years, are the responsibility of the voting faculty members of the department. The department faculty may approve the appointment of a committee to conduct an initial review and provide a recommendation about tier advancement, but the final decision on tier advancement must be put to a faculty vote.

Suggested Change: The voting faculty of each department should have the option, by majority vote, to delegate the entire process of deciding upon tier advancements to a committee of one or more faculty members.

Council feedback on Performance Review Process

Janes explained that the proposed revision allows for delegation of deciding upon tier advancements to a committee of one or more faculty members. Killien noted she is in favor of some delegation, as some units are extremely large, and that having all of the faculty review all of the materials and make an informed decision is likely not going to happen, thus making delegation a justifiable option. The council agreed with this opinion.

Concerns were expressed that in the School of Medicine, a large percentage (stated: “nearly half”) of the faculty are “clinical faculty” and therefore not eligible for the delegation committee, as they are non-voting faculty.

Members noted that the minimum amount of members on the delegation committee should be three faculty members - not one - as it was decided the delegated responsibility is too significant for a single faculty member to bear. There were also fears that a committee composed of more than one member could sustain losses of members, and the committee could technically dwindle to one member.

After discussion, Janes noted the consensus seems to be that delegation is warranted, and that the council is fine with it.

Final thoughts & proposed university faculty poll

Janes explained he would forward the council’s sentiments on the proposed salary policy revisions to faculty senate leadership and report back in the next and final meeting of the academic year.

Killien explained to the council that senate leadership are considering a poll to go out to the UW voting faculty asking for gaining direction on salary policy work. She noted the idea is that it will list three possible options for going forward with work on the salary policy. She noted the exact options have not been defined, but generally are:

1. Stick with the university’s current salary policy and do nothing further.
2. Proceed with a very small edit of the university’s current salary policy, which takes into account some of the widespread issues.
3. Continue work on the faculty salary policy code language within the faculty senate.

Killien noted the poll comes from a widespread desire to direct energy on the topic. Bradley explained the survey would be set up to glean if widespread sentiment supports the faculty senate doing *something*, or doing *nothing*, and that depending on the answer given, the survey taker will be given additional and more detailed options.

The council consensus was approval for the poll idea.

6) Good of the order

Nothing was stated for the good of the order.

7) Adjourn

Janes adjourned the meeting at 12:30 p.m.

Minutes by Joey Burgess, jmbg@uw.edu, council support analyst

Present: **Faculty:** Margaret Adam, Steve Buck, David Goldstein, Joseph Janes (chair), Kurt Johnson, Carol Landis,
Ex-Officio representatives: Judith Henchy, Elyse Janzen
President's designee: Cheryl Cameron
Guests: Marcia Killien, Jed Bradley

Absent: **Faculty:** Alissa Ackerman, Lisa Coutu, Chandan Reddy, Lea Vaughn, Gordon Watts
Ex-Officio representatives: Julian Rees, JoAnne Taricani

Exhibits

Exhibit 1 - FCG Chapter 28_050715_legislative format changes.docx

Adjudicative Proceedings for the Resolution of Differences

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 Office of the University Ombud. The parties are strongly encouraged to use those procedures and other informal mediation procedures whenever possible.

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 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. 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.

Section 28-31 Definitions

The following terms used in this chapter shall have the meanings set forth below:

- A. **Adjudication Panel** is the standing committee of faculty members, students and staff selected pursuant to Section 28-33, Subsection B. Members of any hearing panel or other decision making group for a specific case are selected from the Adjudication Panel.
- B. **Brief adjudication** is an informal adjudication used for cases involving a limited number of persons, simple factual issues and minor impact on the persons involved. Section 28-41 sets forth the types of cases for which brief adjudications are used and the procedures to be followed.
- C. **Comprehensive adjudication** is the formal hearing process used for all cases except the minor cases that are resolved with brief adjudications. Sections 28-51 through 28-54 set forth the procedures to be followed.
- D. **Hearing officer** is an attorney appointed by the Chair of the Faculty Senate and the President, who performs the following functions:
 - 1. For comprehensive adjudications, he or she coordinates the comprehensive adjudication but generally does not have voting power on the final decision; and

2. For brief adjudications, he or she conducts the adjudication without a hearing panel and is the initial decision maker, subject to review ~~of~~ by a panel of faculty.

The hearing officer's qualifications and appointment procedure are specified in Section 28-33, Subsection C.

- E. **Hearing panel** is a group consisting of members of the Adjudication Panel who preside over comprehensive adjudications. The composition of a panel for specific types of cases, and the method of selecting members of a panel, are set forth in Section 28-33, Subsections D and E. When used alone, the term "panel" refers to a hearing panel.
- F. **Day** is any calendar day. Any time period specified in this chapter shall not include the day of the act or event from which the time period begins to run. If the time period specified is less than five days, then "day" shall include only business days.
- G. **Party** is the person who has requested an adjudication and the person or persons whose actions or failure to act are identified in the petition as having given rise to the grievance. The term "party" as used herein does not include nonparty participants and does not include persons, such as a dean or the University Complaint Investigation and Resolution Office (UCIRO), who refer a matter to the Provost for possible action pursuant to Section 28-32, Subsection A.
- H. **Administrative party of right** is a person, not identified in the petition, who, for good and valid reason, is a necessary party 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.
- I. **Nonparty participant of right** is the person or persons who are alleged to be the victims of any harassment, discrimination or other wrongdoing alleged in the petition, such as a person whose ideas or research allegedly has been misappropriated by a faculty member.
- J. **Permissive nonparty participant** is any person who has a substantial interest that will be affected by the outcome of a comprehensive adjudication and whose request to participate in the proceeding has been granted by the hearing officer, pursuant to the provisions of Section 28-51, Subsection A.
- K. **Nonparty participant**, where not specified, applies both to nonparty participants of right and to permissive nonparty participants.
- L. **Faculty member** is any person who, at the time of the decision, action or inaction being contested, meets the definition of faculty member as set forth in Chapter 21, 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.
- M. **Petition** is the document filed by the person requesting an adjudication, in order to begin the adjudication. The contents of the petition and the manner of filing are specified in [Section 28-36](#).

Section 28-32 Cases Subject to Adjudications

- A.** If the University Complaint Investigation and Resolution Office (UCIRO), a dean or any other authorized administrative official files with the Provost a written report that claims reasonable causes exist to adjudicate charges that a faculty member has violated University regulations or state or federal laws pertaining to the faculty member's performance of his or her duties, the Provost shall determine whether such reasonable cause exists. If the report is filed by the UCIRO, the Provost shall first appoint a special committee of three faculty members who are not involved in the matter being considered and who are members of the Adjudication Panel. No member of this special committee shall subsequently serve on any panel hearing or review any adjudication arising out of or related to the matters set forth in the report. Based solely on the written record of the investigation, the special committee shall assist and advise the Provost in his or her evaluation of whether reasonable cause exists. If the Provost believes such reasonable cause exists, then, before taking any disciplinary or punitive action against such faculty member, the Provost shall initiate an adjudication for resolution of such charges by filing a petition in the time and manner specified below.
- B.** A faculty member may initiate an adjudication under this chapter by filing a petition for adjudication within the time limitations specified in Section 28-35 and in the manner specified below, for resolution of a dispute which falls within one or more of the following categories:
- 1.** Cases in which it is alleged that an authorized University official, through action or inaction, has violated University regulations thereby affecting the terms, conditions, or course of employment of the petitioning faculty member. Examples of such cases include, but are not limited to, allegations that University regulations were violated in the denial of tenure or promotion or in the process of program elimination.
 - 2.** Cases where the right to an adjudication is specifically granted to a faculty member under another section of the *Faculty Code*.
 - 3.** Cases in which the petitioning faculty member alleges an injustice resulting from decisions, actions, or inactions of any persons acting on behalf of the University in an administrative capacity and affecting the terms, conditions, or course of employment of the faculty member by the University. In cases involving denial of tenure or promotion, program elimination or discriminatory salary reduction, decisions relating to merit or quality of the faculty member can be reviewed only to the extent necessary to determine whether the decision being questioned was affected by factors other than the relevant and permissible considerations in making the particular decision being challenged. Such relevant and permissible considerations are set forth in sections of the *Faculty Code* chapters addressing appointment, promotion and tenure of faculty members, including but not limited to Chapter 24, Sections 24-32, 24-33, 24-34, 24-35 and Chapter 25, Section 25-32, as amended.
- For purposes of this section, "injustice" shall include, but is not limited to:
- a.** Any action taken that was based at least in part on a legally impermissible reason or on any other reason that was unfair in light of the decision being made; and
 - b.** Any action that was not supported by an articulated reason that can be shown to be fair and relevant to the circumstances.

Section 28-33 Adjudication Panel and Hearing Panels

RATIONALE. Changes in this section include:

1. Restricting appointments to the Adjudication Panel to voting or emeritus faculty. Non-voting faculty may not have the institutional experience or scheduling availability to serve on panels. Emeritus faculty have been voting faculty in good standing at the time of retirement and may lend valuable perspectives to the panel. There is no history of non-voting faculty ever being appointed to the adjudication panel, and some members retire during their term and are willing to complete their terms while on emeritus status. As is currently the case, all members nominated by the SEC must be confirmed by the Senate.
2. Appointing staff or student members to the Adjudication Panel only when a case involving a student or staff member is filed. There is no record of any adjudications proceeding with student or staff in the past xx years, so requiring regular appointment of these members is an unnecessary use of time and resources. In the case where such appointments are appropriate, the process remains the same.
3. Allowing the appointment of a Vice-chair of the Adjudication Panel. This person would be able to serve in the place of the Chair in the chair's absence or conflict of interest.
4. Restricts hearing officers to attorneys who are not members of the UW faculty. There is no record of current employees of the University faculty or staff having been appointed as hearing officers and explicitly restricting the appointment to individuals external to the UW limits potential conflicts of interest.
5. Reduces the typical size of the hearing panel from 5 members to 3. Scheduling hearings with five members is often challenging and prolongs the adjudication process. At the request of one of the parties, the size of the panel can be expanded to five.

A. Brief adjudications shall be heard by a hearing officer who has been appointed under the procedures specified below. Every other adjudication under this chapter shall be heard by a hearing officer and a hearing panel, appointed by the Chair of the Adjudication Panel under the procedures specified below.

B. The Adjudication Panel shall be a standing committee consisting of:

1. At least 24 members of the voting and emeritus faculty, selected broadly from the colleges, schools, and campuses, nominated by the Senate Executive Committee and approved by the Faculty Senate; Faculty members of hearing panels for specific cases are selected from the Adjudication Panel. Study and staff members may serve on the Adjudication Panel on a case by case basis if called to serve under the provisions of Subsection D, below.
- ~~2. At least six student members selected by the ASUW and the GPSS, under procedures established by the ASUW and the GPSS in cooperation with the Chair of the Faculty Senate, and approved by the Faculty Senate (see Class C Resolution at the end of Chapter 28 [Footnote]);~~
- ~~3. At least six staff members selected by the University Office of Staff Personnel, under procedures established by that office in cooperation with the various organizations representing University employees, and approved by the Faculty Senate. Faculty, student, and staff members of hearing panels for specific cases are selected from the Adjudication Panel.~~

During the selection and appointment process for the Adjudication Panel, the commitment of the University to affirmative action and the necessity of diversity in the decision making body shall be adhered to. ~~The Chair of the Adjudication Panel shall be nominated annually by the Senate Executive Committee from among the Adjudication Panel faculty members and shall be approved by the Senate.~~ No department chair, school director, assistant dean, associate dean, or dean shall serve on the Adjudication Panel. Faculty and staff Adjudication Panel members shall serve three-year terms. ~~Student Adjudication Panel members shall serve one year terms.~~ Adjudication Panel members and the Chair of the Adjudication Panel are eligible for reappointment except that in the event that a panel member has served two consecutive terms, then such a member shall be ineligible for reappointment for a period of three years. A Chair and Vice-chair of the Adjudication Panel shall be nominated annually by the Senate Executive Committee from among the Adjudication Panel faculty members and shall be approved by the Senate.

- C. At least three hearing officers shall be appointed jointly by the President and the Chair of the Faculty Senate. The terms and conditions of a hearing officer's appointment shall be determined jointly by the President and the Chair of the Faculty Senate. All such hearing officers must be attorneys admitted to the practice of law in at least one United States jurisdiction and shall have knowledge of hearings procedures and university and faculty matters. No department chair, school director, associate dean, or dean, or faculty member shall serve as hearing officer.
- D. All comprehensive adjudications involving a non-party participant of right who is either a student or staff member shall be heard by a hearing officer and, unless waived by all of the parties, a hearing panel composed of:
- ~~1. 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), and~~
 - ~~2.1. Five~~ Three faculty members or, upon the request of one party, with the unanimous consent of the parties, three five faculty members of the Adjudication Panel and,
 2. In a case involving allegations by a student, two student members, who shall be appointed from a list of at least six eligible students selected by the ASUW and the GPSS, under procedures established by the ASUW and the GPSS, and approved by the Faculty Senate Chair, or
 3. In a case involving allegations by a staff member, two staff members, who shall be appointed from a list of at least six staff members, selected by the University Office of Human Resources Staff Personnel, under procedures established by that office in cooperation with the various organizations representing University employees, and approved by the Faculty Senate Chair.
- E. All other adjudications shall be heard by a hearing officer and a hearing panel of ~~five~~ three faculty members, except that upon the request of one of the parties, the hearing panel may be ~~reduced~~ increased to ~~three~~ five faculty members, or with the unanimous consent of the parties the hearing panel may be waived.
- 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.

- 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.
- H.** 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.
- I.** Hearing panels may, but are not required to, meet during the period of June 16 through September 15.

RC, April 22, 2010.

Section 28-34 Burden and Standard of Proof

The burden of proof with respect to claims made in the petition that commences an adjudication under this chapter is on the party filing the petition. The burden of proof with respect to any counter claims made by a party in a responsive pleading is on that party. The applicable standard of proof for all adjudications under this chapter shall be the preponderance of the evidence.

Section 28-35 Time Limitations on Initiating Adjudications

- 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 30 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 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 within:

1. Ninety 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
2. Ninety 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 this subsection shall be suspended during the period of June 16 through September 15 if the faculty member's contract does not include such period.

RATIONALE: TIME LIMITS ON FILING ADJUDICATIONS. The change in C. (below) clarifies that time limits are suspended only for the specific informal dispute resolution processes of mediation or conciliation. These are the only processes for which specific records of initiation and termination dates are kept and thus can be documented. Informal discussions among parties or with the Ombud would not be included in the mandatory suspension of the time limits, although the parties retain the right (described in D, below) to specifically argue that time limits be suspended on the grounds of a gross injustice. Adding the term "specifically" to D. clarifies that the burden to argue a gross injustice rests with the party bringing the adjudication.

- C. Notwithstanding Subsections A and B of this section, if the parties choose to engage first in informal dispute resolution proceedings, ~~such as~~ of mediation or the conciliatory conciliation 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. 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.
- D. If a party does not file a Notice of Request for Adjudication and petition within the time limits prescribed in Subsections A, B and C above, then the right to an adjudication shall terminate. Notwithstanding the foregoing, if a faculty member files a Notice of Request for Adjudication and a petition after the time limits prescribed in Subsections A, B and C above have expired, and such notice and petition specifically allege that circumstances exist which would make it grossly unjust to refuse to grant the adjudication on the basis of untimeliness, then the Chair of the Adjudication Panel shall appoint a special committee of three panel members. The special committee shall determine whether the adjudication should be granted despite the untimely filing, on the grounds that it would be grossly unjust to refuse to grant the adjudication. In making such determination, the following factors shall be considered by the special committee:
1. The seriousness of the actions, events, or decisions from which a claim for relief allegedly arises, and the seriousness of the alleged impact on the person seeking relief.
 2. The reasons for the untimely filing and the extent to which they were or were not within the control of the person seeking relief.

3. The degree of probable prejudice to other parties to the adjudication if the adjudication is granted. The special committee shall make its determination within ten days of notice of its appointment.

Section 28-36 Manner of Initiating Adjudications

RATIONALE: Changes below are proposed to update the FC to reflect current procedural practices and 1) allows the Adjudication Panel Chair to, in certain circumstances, issue a summary disposition, 2) postpones distribution of materials to hearing panel members until all challenges have been resolved, and 3) provides for consolidation of multiple petitions from the parties. These changes are made to increase the efficiency of the adjudication process and (in the case of point #2) increases protection of the confidentiality of the parties by restricting information about the case to those who have a need to know.

- A. The person requesting an adjudication shall file a Notice of Request for Adjudication and a petition with the Secretary of the Faculty. The Secretary of the Faculty shall maintain written procedures for filing an adjudication petition and may decline to accept an incomplete or improperly submitted petition. ~~The Notice of Request for Adjudication shall be substantially the same form as prescribed by the Adjudication Panel and made available to the Provost and faculty members.~~ The petition shall set forth with reasonable particularity the reason for the request for adjudication, the relief sought, and the facts relied upon as the grounds for the petition and the relief sought. If the Provost is the requesting party, the Provost shall include a copy of the written report from the University Complaint Investigation and Resolution Office (UCIRO), the dean, or other administrative official that forms the basis of the request for adjudication. Within seven days of receipt of a notice and petition, the Secretary of the Faculty shall ~~prepare an Adjudication Summary form that sets forth the names of the persons receiving the notice and petition, the persons who are required to respond and the time limits and procedure to follow when responding,~~ and shall deliver complete copies of the notice, the petition, and the summary time limits and procedures for response to the Provost, the Chair of the Adjudication Panel, other parties, nonparty participants of right, if any, and any other faculty member, dean, or official of the administration, student or staff member who is named in the petition.
- 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, ~~and petition and summary.~~ and petition. 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 University Ombud or such other person who has been requested to conduct the informal dispute resolution proceeding shall provide written notice to the Chair of the Adjudication Panel and to the Secretary of the Faculty. 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.

- C. Within 14 days of receipt of the response, or within 14 days after expiration of the 37-day period following receipt of the notice and petition, whichever is earlier, the Chair of the Adjudication Panel shall:
- Determine whether the notice and petition have been properly and timely filed;
 - Determine whether a brief adjudication is appropriate under the provisions of Section 28-41 below, and if so, appoint a hearing officer to conduct the adjudication;
 - Identify the parties and the nonparty participants of right, if any, to the adjudication;
 - If a comprehensive adjudication is required, appoint the hearing officer, determine the appropriate composition of the hearing panel and appoint the members of such panel, under the provisions of Section 28-32 above.
 - Issue a summary disposition without a fact-finding hearing if the adjudication or a particular claim or issue material to the adjudication would not be resolved through the adjudication process or would not be able to provide the relief sought by the petitioner.

Where students or staff are to be members of the panel, the Chair shall notify the Secretary of the Faculty who shall ~~appropriate personnel~~ and coordinate the selection of those persons.

Once the above specified determinations are made and the hearing panel, if required, is appointed, the Chair shall promptly notify the person who filed the notice and petition and all persons who are entitled to receive a copy of the notice and petition, as specified above, of such determinations, ~~and the identity of the hearing officer and hearing panel members,~~ and the rights of the parties to challenge appointees for cause. ~~The Chair shall immediately give copies of all documents filed in the matter to the hearing officer and each member of the hearing panel.~~ The Chair shall also promptly deliver to any nonparty participants of right a statement of their rights of participation in the adjudication.

- D. At any time after the petition has been filed, if the Provost believes there are compelling circumstances, such as danger to the health or safety of members of the University community, that warrant the suspension of the faculty member from teaching or other duties pending resolution of the adjudication, the Provost may, after consultation with the Chair of the Faculty Senate, suspend the faculty member for a period not to exceed the duration of the adjudication and assign the suspended faculty member to other duties as the Provost deems appropriate. The faculty member's regular salary, benefits and other privileges shall continue during such suspension. A decision to suspend a faculty member shall comply with the requirements of RCW 34.05.479, including the requirements of maintaining an official record and preparing a written order with findings of fact, conclusions of law and policy reasons.

RC, March 3, 2013.

Section 28-37 Disqualification of Adjudication Panel Chair, Hearing Officer and Panel Members

RATIONALE: This section now allows for a challenge to the adjudication panel chair and provides for a Vice chair to replace the chair should such a challenge be upheld.

- A. The adjudication panel chair, A a member of a hearing panel, or the hearing officer, shall disqualify himself or herself upon his or her own initiative immediately upon discovery of a cause for disqualification. Cause for disqualification shall include:
1. Reason to believe that some personal consideration or relationship might interfere with the hearing officer's or panel member's ability to reach an unbiased decision;
 2. The hearing officer or panel member, outside of the proceedings, has received communications or has obtained information which creates a significant risk of substantial unfairness; or
 3. The matter directly involves a departmental colleague or, if the matter involves a faculty member from a non-departmentalized school or college, a college or school colleague of the panel member or the hearing officer.
- B. Any party or nonparty participant to the adjudication may challenge the adjudication panel chair, any panel member, or the hearing officer, for cause for the reasons stated in Subsection A above. If the facts supporting the disqualification are then known to the party or nonparty participant, the challenge must be made in writing to the ~~Chair of the Adjudication Panel~~ Secretary of the Faculty within seven days after receipt of notice that the person being challenged is the adjudication panel chair, assigned hearing officer or a panel member. A copy of the written challenge shall also be provided to the other persons entitled to receipt of Notice of Request for Hearing. If the facts supporting the disqualification are discovered after notice of the person's appointment, the challenge shall be made in the same manner described above within seven days of discovery of such facts, and the written challenge shall include a statement regarding the circumstances of discovery of such facts. The Secretary of the Faculty shall review any such challenge to the Adjudication Panel Chair and decide whether there is sufficient cause to disqualify the challenged panel chair. If the panel chair is disqualified, the Vice-chair of the adjudication panel shall assume the responsibilities of the chair. The Chair of the Adjudication Panel shall review any such challenge to the hearing officer or panel members and decide whether there is sufficient cause to disqualify the hearing officer or challenged panel member.
- C. A hearing officer serving with a panel and the Chair of the Adjudication Panel may disqualify any member of such panel for failure or inability to make himself or herself available for the necessary proceedings, for repeated absences from the panel meetings required under this chapter, or for failure to familiarize himself or herself with the record of the adjudication or the necessary procedures.
- D. If a hearing officer is disqualified, the Chair of the Adjudication Panel shall appoint another hearing officer. If a panel member is disqualified, then at the discretion of the Chair of the Adjudication Panel, the Chair shall either appoint another member of the Adjudication Panel to the hearing panel, or, if the adjudication is in a later stage, continue the adjudication with the remaining panel members.

- E. Upon finalization of the appointments of the hearing officer and hearing panel members, the Secretary of the Faculty shall immediately distribute to each of them copies of all documents filed in the matter.

NOTE: No further changes from this point forward (with the exception of one sentence added 28-51, Subsection C) until Section 28-61.

Section 28-41 Brief Adjudications

- A.** The Chair of the Adjudication Panel shall, pursuant to Section 28-36, Subsection C, determine that a brief adjudication be used for all cases whose sole issue is one of the following:
- 1.** The allocation of discretionary or merit salary increases;
 - 2.** The allocation of space, support staff, or other resources or materials;
 - 3.** Teaching, committee or other assignments within the department, school or other unit;
 - 4.** A conflict between or among faculty members, other than claims of sexual, racial, or other legally impermissible discrimination or harassment or claims of scientific or scholarly misconduct; or
 - 5.** Any other issue which the Chair and two members of the Brief Adjudication Panel determine is appropriate for brief adjudication. In making determinations of whether a brief adjudication is appropriate for a particular case pursuant to this section, if the Chair determines that:
 - a.** The case does not fall clearly within one of the categories specified in Subsections A.1 through A.4 above but which may nevertheless be appropriate for a brief adjudication, or
 - b.** It is unclear for any other reason whether a brief adjudication would be the appropriate procedure.

The Chair shall convene a committee consisting of himself or herself and any two members of the Brief Adjudication Panel. The Brief Adjudication Panel shall be a standing committee consisting of five members of the Adjudication Panel appointed from time to time by the Chair of the Adjudication Panel. The Chair and the two members of the Brief Adjudication Panel shall review the matter, confer, and make a decision whether a brief adjudication is appropriate for the case at issue. The review shall include consultation with any faculty member whose interests would be directly affected by the adjudication and review of records of any previous Brief Adjudication Panel decisions for similar cases. The decision shall be made with sufficient speed so that the Chair may make the necessary determinations and appoint a hearing officer and a hearing panel, if necessary, within the time limits specified in Section 28-36, Subsection C. The Chair shall prepare a written report summarizing the nature of any case submitted to a Brief Adjudication Panel, the decision made as to the type of adjudication to be used and the basis of such decision and shall include such report in the records of the Adjudication Panel. If the Chair and the two members of the Brief Adjudication Panel decide that a comprehensive adjudication is appropriate, none of the members of the Brief Adjudication Panel making such decision will serve on the hearing panel for that case.

- B.** Notwithstanding the foregoing, a brief adjudication shall not be appropriate for a case in which any one of the following factors is present:
- 1.** Complex factual issues that require a formal fact finding process for resolution;

2. A significant sanction or other significant adverse impact on the faculty member, such as discharge of employment or revocation of tenure, if the decision is adverse to the faculty member;
 3. Significant impact on the affected faculty member's academic career;
 4. A relatively large number of persons involved in the dispute or affected by its outcome;
 5. A series of actions or non-actions that taken alone are not significant but together exhibit a pattern of unfairness;
 6. Allegations of unlawful discrimination; or
 7. The protection of the public interest requires notice and an opportunity to participate to be given to persons other than the parties, including persons who would qualify as nonparty participants under the definition herein.
- C. Upon appointment, the hearing officer shall review the documents on file in the matter and conduct an investigation of the matter. The initial investigation, at the discretion of the Hearing Officer, may include any of the following:
- Meeting with the parties, together or separately;
 - Communicating with the parties through mail or by telephone;
 - Communicating with any other person that the hearing officer thinks can provide information relevant to the dispute; and
 - Requesting relevant documents from any person.

As part of the investigation, the hearing officer must contact each of the parties and give each of them an opportunity to present written and/or oral evidence (determined at the discretion of the hearing officer) supporting the party's position in the matter and a written or oral statement of the party's position. The decision to restrict the parties' responses to written submissions and the decision of whether an informal hearing where all parties are present and are allowed to present oral statements and evidence are at the sole discretion of the hearing officer. If the hearing officer determines that an informal hearing is appropriate, the hearing officer shall schedule such hearing at a time convenient for all the parties, that is at least ten days and no more than 14 days following the date of appointment of the hearing officer. At least five days prior to such a hearing, the hearing officer shall notify the parties in writing as to the issues that may be addressed at the hearing, the evidence that will be relevant at the hearing and the general procedures to be followed at the hearing. The hearing shall be either recorded (sound only or video), or transcribed by a court reporter, as determined by the hearing officer. The hearing officer shall make a contemporaneous written record of any oral communication (in person or by telephone) relating to the investigation which is not heard by a party and shall distribute such written record immediately to all parties and to the person with whom the communication occurred. If the person with whom the communication occurred has a different recollection of the conversation, that person shall immediately deliver to the hearing officer a written statement detailing the differences. The hearing officer shall immediately deliver such a statement to the parties and shall include such statement in the written record of the proceeding.

- D. If the hearing officer discovers in the course of investigation that the issues are sufficiently complex or there are other factors that indicate that a comprehensive adjudication is required for fair resolution of the matter, the hearing officer will immediately notify the Chair of the Adjudication Panel and the parties of such determination. Upon receipt of such notification, the Chair of the Adjudication Panel shall appoint a hearing panel under the procedures described in

Section 28-33 and the matter will proceed as a comprehensive adjudication. At any time during the course of a brief adjudication a party may request that the adjudication be converted to a comprehensive adjudication by giving notice to the hearing officer and the other parties of such request together with a statement of the reasons why a comprehensive adjudication is required for a fair resolution of the matter. The hearing officer will rule on such a request within two days of receipt. If the hearing officer rules against such conversion, the brief adjudication will proceed and the party requesting the conversion may again request a comprehensive adjudication during the appeal process of the hearing officer's decision, as provided below in Section 28-61.

- E. Within 30 days of appointment, the hearing officer will render a written decision to the parties, together with a brief statement as to the reasons for the decision and a statement of the parties' rights to appeal the decision.
- F. The record of a brief adjudication shall consist of only the following:
 - 1. The notice and petition filed by the party initiating the adjudication, all responses filed by other parties, and the Adjudication Summary prepared by the Chair of the Adjudication Panel;
 - 2. Evidence received or considered;
 - 3. All written statements submitted by persons and parties, all written records of oral communication prepared by the hearing officer and circulated to the parties and all amendments thereto that have been submitted;
 - 4. The transcript or recording of any hearing held during the course of the adjudication; and
 - 5. Any other document regarding the matter that was considered or prepared by the hearing officer or the Brief Adjudication Review Panel during review of the hearing officer's decision.

S-A 132, March 25, 2014 with Presidential approval.

Section 28-51 Comprehensive Adjudications—Nonparty Participants

- 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 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.
- B. In addition to the persons who may be nonparty participants of right, the hearing officer may grant a petition filed by any person at any time for permissive nonparty participation, upon determining that the petitioner has a substantial interest that will be affected by the outcome of the adjudication, that participation by such party in the adjudication is necessary to protect that interest and participation by that party will not unduly delay or prejudice the determination of the rights of the parties to the adjudication. Such person's status as permissive nonparty participant shall commence only upon issuance of an order from the hearing officer allowing such person's participation. The hearing officer has the discretion to impose conditions on such person's right to participate and may limit his or her rights to participate, either at the time that the right to

participate is granted or at any subsequent time. For a comment on nonparty participants' right to be represented by counsel, see Section 28-52, Subsection G below.

- C. All nonparty participants, both of right and permissive, in addition to the right to challenge the hearing officer or a member of the hearing panel for cause as provided above, shall have the following rights of participation in the adjudication:
1. Right to receive copies of all documents filed in the adjudication, within the same time limits as such copies are required to be delivered to the parties in the adjudication.
 2. Right to timely notice of date, place and time and to attend the prehearing conference, the hearing, and any interim proceedings.
 3. Right to file written independent statements and responses to documents filed by the parties at any time prior to the hearing (including written statements and responses regarding a pending motion for summary disposition under Section 28-52, Subsection D), provided that any such statements or responses are delivered by the nonparty participant to each party to the adjudication within two days of delivery to the hearing panel.

In addition to the above listed rights, a nonparty participant may, at the discretion of the hearing officer and the panel, be granted the following rights of participation:

4. Right to have counsel accompany them to all proceedings.
5. Right to be represented by counsel during the proceedings, provided that if the parties choose not to be represented by counsel [see Section 28-52, Subsection G], then a nonparty participant may not be represented by counsel.
6. Right to cross-examine witnesses, introduce evidence and call additional witnesses during the hearing, either on his or her own behalf or through counsel, subject to the limitation in Section 28-51, Subsection B.5.
7. Right to give opening and closing statements, either on his or her own behalf or through counsel.
8. If unable to be present at the hearing or any preliminary proceeding, the right to be represented at the hearing and all preliminary proceedings by a special representative chosen by the nonparty participant and approved by the hearing officer.
9. Such other rights of participation in the adjudication as the hearing officer or hearing panel determines to be conducive to a fair and efficient hearing.

A nonparty participant shall have the rights specified in Subsections C.4 through C.9 above only to the extent the hearing officer or hearing panel has determined to be conducive to a fair and efficient hearing and which would aid in the panel's resolution of the matter.

The hearing officer shall make an initial determination prior to the prehearing conference as to the additional rights of participation, if any, that shall be given to the nonparty participant. The nonparty participant and any party may file a written request with the hearing officer prior to the prehearing conference regarding the extent of a nonparty participant's participation rights, and may make an oral request regarding participation rights at the prehearing conference. The determination of the extent of a nonparty participant's participation rights shall be made by the hearing officer, subject to revision by the hearing panel, and shall be included in the Prehearing Order. The Chair shall promptly deliver to any nonparty participants of right a statement of their rights of participation in the adjudication.

Section 28-52 Comprehensive Adjudications—Preliminary Proceedings

- 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.

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:

- 1.** The deadline for submission of written offers of proof by affidavit or otherwise, and for submission of argument, and
- 2.** At the panel's option, a hearing 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 any hearing. If summary disposition is granted the panel shall dismiss the petition and issue a decision pursuant to Section 28-54.

- B.** 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.
- C.** 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 than 20 days after appointment of the hearing panel.
- D.** 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.

- E.** Unless the adjudication has been disposed of completely by summary disposition, the hearing officer, at the direction of the panel, shall issue a Prehearing Order within 15 days of the prehearing conference, which shall set forth the issues to be addressed at the hearing, the factual issues which are uncontroverted, the witnesses to be called and the other evidence to be presented, the extent to which any discretionary rights to participate will be given to nonparty participants, the extent to which depositions, requests for admission and any other form of discovery will be allowed and any other matters the hearing panel shall deem appropriate in setting the procedure to be followed at the hearing. Such notice shall also set the time and place of the hearing and shall contain the information required by RCW 34.05.434. The hearing shall be set no less than ten days and no more than 30 days after the notice of the prehearing conference was issued.
- F.** The Prehearing Order shall specify whether the adjudication shall be open or closed. A determination at a later date that the hearing should be closed shall be made by written protective order.
- G.** Any faculty member who is a party to a proceeding under this chapter shall have the right to be represented by counsel at all stages in the proceedings. Normally, if the faculty member chooses not to be represented by counsel at proceedings before the hearing panel and/or the hearing officer, the administration will not be so represented, except in cases where the faculty member is an attorney. Where the faculty member chooses to be represented by counsel, the administration shall not be obligated to reimburse the faculty member for the attorneys' fees and costs he or she incurs, except as provided under Section 28-54, Subsection B.
- H.** If after the Prehearing Order is issued, a party shall receive additional information, the party may request that the panel amend the Prehearing Order to allow the presentation of such additional information at the hearing and may request leave to amend its pleadings on file. Such request shall be served on all parties and nonparty participants. The hearing panel has full discretion to allow or deny such request and may grant a continuance if a non-requesting party needs additional time in which to prepare for and respond to the additional information.
- I.** The hearing officer may instruct any person who is a party to the adjudication or an administrative officer or administrative employee of the University to appear and to give testimony under oath or affirmation, or to produce a specific document or other thing belonging to a party or to the University relevant to the issues in the adjudication.

 - 1.** If the person to whom the instruction is directed is a non-administrative party to the adjudication and that person refuses or fails to appear at the time and place designated to give testimony or to produce the documents or things specified:

 - a.** If the hearing officer finds that the testimony, documents, or things sought are under the control of the non-administrative party to produce and are not privileged for purposes of the adjudication, then the hearing panel may impose such sanctions as are appropriate.

4. 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. 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.
- B.** The hearing shall either be recorded, audio only or video, or transcribed by a court reporter, as determined by the hearing panel. Such recording or transcription shall be made at University expense. Copies of the recording or transcript shall be made available to any party or nonparty participant of right at University expense upon request.
- C.** If the facts in the case or relief requested are in dispute, testimony of witnesses and other evidence relevant to the issues and to the relief requested shall be received if offered. The hearing officer may admit and consider evidence on which reasonably prudent people are accustomed to rely in the conduct of their affairs. The hearing officer shall give effect to the rules of privilege recognized by law, shall exclude evidence that is excludable on constitutional or statutory grounds and may exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence, and evidence whose probative value is substantially outweighed by the danger of undue prejudice to any party or nonparty participant. The hearing officer and the hearing panel shall refer to the Washington Rules of Evidence as non-binding guidelines for evidentiary rulings. All testimony of parties and witnesses shall be given under oath or on affirmation. Documentary evidence may be received in the form of copies or excerpts or by incorporation by reference. Official notice may be taken of any judicially recognizable facts and codes or standards that have been adopted by an agency of the United States, this state or another state or by a nationally recognized organization or association. Parties and nonparty participants shall be notified either before or during the hearing of the material so noticed and the sources thereof and shall be afforded an opportunity to contest the facts and materials so noticed (except to the extent a nonparty participant's right to do so is limited by the hearing officer or hearing panel).
- D.** The hearing officer shall regulate the course of the hearing in conformity with the Prehearing Order and shall not be required to follow formal court procedure. To the extent necessary for full disclosure of all relevant facts and issues, the hearing officer shall afford to all parties and nonparty participants the opportunity to respond, present evidence and argument, conduct cross-examination and submit rebuttal evidence, except as restricted by a limited grant of nonparty participation or by the Prehearing Order.
- E.** The panel in its discretion may:
1. Direct the parties to produce information on specific issues deemed significant by the panel.
 2. Proceed on its own initiative to call witnesses to testify or admit evidence on its own motion.
- F.** The parties shall have the opportunity to confront all witnesses. In the event that witnesses are unavailable or at the consent of the parties, depositions from witnesses or answers to written interrogatories may be presented or telephone depositions may be made in lieu of personal appearance at the hearing. The panel, in its discretion, may make such information part of the

record. The hearing panel may take whatever other steps it deems reasonable and fair to all persons involved to deal with the unavailability of a witness.

- G. The panel, in its discretion, may adjourn the proceedings from time to time to allow the further development of the evidence.

Section 28-54 Comprehensive Adjudication—Decision

- A. Within 30 days after the conclusion of the hearing, or after the due date of all post-hearing briefs requested, if later, the panel shall make known its decision in writing. The decision shall be made by majority vote of all panel members, excluding the hearing officer, provided that in any adjudication initiated under Section 28-32, Subsection A, to remove or dismiss a faculty member pursuant to Chapter 25, Section 25-51 or 25-63 of the *Faculty Code*, the decision shall be made by a vote of five members of a seven-person panel or four members of a five-person panel. If at the conclusion of the hearing, there is an even number of panel members remaining due to loss of one or more panel members and the remaining panel members are evenly divided as to the decision on any issue or award of relief, the hearing officer shall cast a vote, but only to the extent necessary to break the deadlock.
- B. In the written decision, the panel shall set forth its findings with respect to each of the material grounds or issues raised and to the relief requested by the parties and state its conclusions regarding those issues. It shall also state specifically any action necessitated by the decision and identify the specific relief to be provided, including but not limited to suspension or dismissal, reprimand or warning, restoration or award of privileges, benefits or status, a cease and desist order, an order that a certain party receive counseling or other medical treatment, and including direction to the Provost or other appropriate party to take such steps as may be necessary to carry out the decision. The panel shall have the authority to recommend the award of compensation for economic relief to a party or nonparty participant of right where such party or nonparty participant of right has made a timely request in his or her pleadings for such relief and has proven the right to the relief during the course of the proceedings. In addition, the panel has authority to recommend an award of reasonable attorneys' fees to a prevailing faculty member if:
 - 1. The administration was the unsuccessful party in the case and the panel determines that the position of the administration in the case was grossly unreasonable or maintained in bad faith, or
 - 2. The prevailing faculty member was obliged to hire legal counsel to represent him or her in a comprehensive adjudication by virtue of the administration's failure to waive representation by legal counsel as provided in Section 28-52, Subsection G.
- C. Within 24 hours of the panel's written decision being put in final form, the panel shall deliver copies of the decision to the President, all parties and all nonparty participants. Copies shall also be filed with the Chair of the Adjudication Panel, the Chair of the Faculty Senate, the Secretary of the Faculty, and the University Ombud for the information of the Conciliation Board.

RC, March 3, 2013.

Section 28-61 Review Procedures

RATIONALE: Changes to this section are made to clarify that any and all disputed actions by persons involved in conducting the adjudication may be appealed to the President at the conclusion of the hearing.

- 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 the final decision of the University. 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 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 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 the hearing officer may be appealed. Any such appeal shall proceed under the procedures of Subsection B of this section below.

- B. Any summary disposition by the adjudication panel chair or 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.

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:

1. Affirm the panel's decision; or
2. Remand for further proceedings.

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 adjudication panel chair or the hearing panel in reaching its ~~their~~ decisions, or any other person involved with the adjudication procedures 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.

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:

1. Not supported by a preponderance of the evidence in the record, or
2. Was arbitrary or capricious, or
3. The procedures followed were materially and prejudicially unfair or in violation of law or University rules.

A decision by the President to affirm, reverse or amend the decision of the panel is a final decision of the University.

- 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.

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:

1. Affirm the panel's decision;
2. Reverse or amend the panel's decision; or
3. Remand for further proceedings.

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. A decision by the Board to affirm, reverse or amend the decision of the panel, is a final decision of the University.

- 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 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.
- 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 Secretary of the Faculty, the Chair of the Adjudication Panel, the Chair of the Faculty Senate, and the University Ombud for the information of the Conciliation Board, as soon as the decision becomes final.
- F. 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 Subsection B of this section, or a final decision of the Board under Subsection C of this section. 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 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 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 order or decision do not intend to act on the petition.

RC, March 3, 2013.

Section 28-71 Time Deadlines

Unless otherwise specified in this chapter, requests for extensions of timelines shall be made to and granted by the Secretary of the Faculty. If a hearing officer, a hearing panel, the Chair of the Adjudication Panel, the Secretary of the Faculty or any reviewing body shall fail to meet any of the deadlines set in this chapter, such failure shall not affect the validity of the procedure, or any decision resulting from an adjudication held pursuant to this chapter, unless the delay was unreasonable and unduly prejudicial to the interests of any party or nonparty participant of right.

Section 28-81 Availability of the Record

At the conclusion of the proceedings, the record of the hearing shall be maintained by the Secretary of the Faculty in accordance with the UW's Records Retention Schedule and shall be available for review to persons or organizations not party to the proceedings but having an interest therein, not inconsistent with the tenets of academic freedom and privacy rights of the parties or persons involved, subject to the written approval of both the President and the faculty member or members involved in the proceeding. Copies of any portion of the record previously transcribed shall be made available at actual duplication cost in accordance with these same provisions.

Section 28-91 Implementation

Upon completion of the adjudicative proceedings, the President shall instruct the parties to do whatever is necessary to implement the decision and shall take all action necessary to insure that relief awarded is realized in fact. Copies of these communications shall be sent to all parties, nonparty participants, the hearing officer and hearing panel, and the Secretary of the Faculty.

Section 28-101 Report of the Adjudication Panel

The Chair of the Adjudication Panel shall annually report to the faculty ~~in a Class C Bulletin~~ in September the number of brief and comprehensive adjudicative proceedings commenced or concluded during the prior academic year and the action that ensued. Names of the grievant or accused shall not be published.

S-A 73, May 24, 1985; S-A 91, July 11, 1994; S-A 101, July 7, 2000: all with Presidential approval.

RATIONALE: The following section has been revised and placed in the adjudication procedures manual. The original text was the result of non-binding Class C legislation.

~~Footnote: Policy Regarding Procedures in the Selection and Appointment of Student and Staff Members on the Adjudication Panel~~

- ~~A. The following rules for the selection of student members of the Adjudication Panel are based on drafts submitted by the ASUW and GPSS:~~
- ~~1. Six undergraduate students shall be selected by ASUW and six graduate or professional students shall be selected by GPSS to serve on the Adjudication Panel according to the ordinary appointment processes of those organizations.~~
 - ~~2. Student members shall be matriculated, full-time students in good academic standing who intend to be in residence at the Seattle campus for two years.~~
 - ~~3. Members of the ASUW Board of Control, ASUW Commission Directors, and officers of the GPSS are ineligible for appointment to the panel.~~
 - ~~4. Members shall be appointed, or reappointed, for a term of one calendar year, to be effective the start of the following Autumn Quarter.~~
 - ~~5. Every effort shall be made to appoint a diverse group of students to the panel, to maintain a balance with regard to gender, living group, academic area, race and ethnicity.~~
 - ~~6. ASUW and GPSS shall submit the names of the persons selected to the Chair of the Faculty Senate as early as possible during Spring Quarter for consideration at the next meeting of~~

the Senate Executive Committee and approval at the following meeting of the Faculty Senate.

- ~~B.~~ The following rules for the selection of staff members of the Adjudication Panel are based on a draft submitted by the Director of Personnel Services:
- ~~1.~~ Six members of the staff shall be selected by the Director of Personnel Services and the Professional Staff Advisory Council from persons nominated by each of the collective bargaining units and the Professional Staff Organization.
 - ~~2.~~ Staff members shall be full time employees with at least three years' experience on staff at the University of Washington.
 - ~~3.~~ Officers and board members of organizations representing University employees are ineligible for appointment.
 - ~~4.~~ Staff members shall be appointed, or reappointed, for a term of three calendar years, beginning on September 16, except that of the initial six appointees, two shall be appointed for a period of one year; two shall be appointed for two years; and two shall be appointed for three years.
 - ~~5.~~ Every effort shall be made to appoint a diverse group of staff members to the panel, seeking to maintain a balance with regard to gender, age, employment category, race, and ethnicity.
 - ~~6.~~ The Director of Personnel Services shall submit the names of the persons selected to the Chair of the Faculty Senate as early as possible during Spring Quarter for consideration at the next meeting of the Senate Executive Committee and approval at the following meeting of the Faculty Senate.

~~S-C, December 1, 1994.~~