

Report of the Faculty Grievance Procedures Task Force

14 December 2006

[Approved unanimously by Senate Assembly on January 22, 2007.]

[Approved unanimously by SACUA on December 18, 2006.]

Kimberlee Kearfott

John Lehman

Scott Masten

Charles B. Smith

Galip Ulsoy

Michelle Sargent (staff support)

Preamble

On 11 September 2006, by unanimous Action 091106-1, SACUA established a Grievance Procedures Task Force with the goal of delivering a report to SACUA by December 2006. The action was prompted by experience and observation that the present Faculty Appeal Procedure has proven poorly suited to resolving disputes concerning administrators' treatment of faculty. In particular, because the Director of Academic Human Resources (DAHR) acts as the Provost's representative in the grievance process, it is widely understood that DAHR conduct has not been neutral. Similarly, it is clear that both the DAHR and the Office of General Counsel act, in their own words, "to protect the administration" and they are widely perceived to be prejudicial to fair proceedings.

Task Force Objectives

Ideally, the goal should be the avoidance, to the greatest extent achievable, of the need for grievance procedures and litigation. To achieve this goal in reality, however, there must be a fair hearing process for grievances. This requires full endorsement by faculty and administration of a set of principles governing their behavior in the University community. Acceptance of policy and practice embodying these principles and steady adherence to them could markedly improve the collegiate atmosphere by establishing a "covenant of fair dealing" between administration and faculty. Because disputes impose significant burdens, idealized dispute resolution should be swift and relatively simple, but manifestly fair and equitable. These procedures are intended to be available to faculty members of the academic units (defined as the schools, colleges, research units or related unit), hereinafter referred to as faculty, who have disputes or complaints concerning any aspect of their employment.

Elements of a fair hearing

A fair hearing must provide a full review with the following set of elements:

- The opportunity to be heard is the fundamental requisite.
- Impartial decision makers are essential.
- The hearing must be at a reasonable time and it must be held in a reasonable manner.

- There must be opportunity for oral presentation so that grievant can mold arguments to issues the decision makers seem to regard as important, particularly where credibility and veracity are at issue.
- There must be adequate opportunity to confront and cross-examine adverse witnesses.
- When administrative actions harm a grievant and the reasonableness of the action depends on fact findings, all evidence used to prove the administration's case must be disclosed to the grievant so that he has an opportunity to prove it is untrue. This opportunity for rebuttal requires that evidence be exchanged in advance of the hearing.
- This is important not only for documentary evidence, but even more so when evidence consists of testimony from individuals whose memories may be faulty, or whose statements may be untrue or subject to questionable motive.
- Decision makers' conclusions must rest solely on the rules and evidence adduced at the hearing.
- Decision makers must state the reasons for their determination and indicate the evidence relied upon.
- Grievance Review Boards (GRBs) should have limited ability to dismiss a grievance without affording a grievant the opportunity for a hearing on the merits of his/her cause.
- Decisions by the GRB must not be ignored by administrative officers.
- There must be meaningful consequences for non-compliance with stated rules by participants or the GRB itself.

Deficiencies of the Current Grievance Procedures

If the goal of the grievance process is to identify and correct mistakes and limit abuses of administrator discretion, the current grievance procedures have not served the faculty or the University well. Faculty who pursue grievances suffer, among other things, long delays, interference with research and other scholarly endeavors, damage to collegial relations and, often, financial burdens, with little prospect of an unbiased outcome.

Aspects of the existing procedures that contribute to their failure include:

- Conflicts of interest, of review and appeal boards whose members are frequently subordinates of respondents; of administrators who are loath to overrule their direct subordinates; and in the administration of the procedures by the Office of Academic Human Resources, which sees its job as protecting the administration;
- Asymmetries in access to information and personnel, which greatly disadvantage grievants;
- Inadequate, ambiguous, and conflicting definitions and standards, regarding grievability, standards of proof, admissibility of and access to information, and of the bounds of acceptable administrator behavior, resulting in inconsistency and arbitrariness in the interpretation and application of the procedures; and
- Lack of effective enforcement, both of violations of the procedures and of grievance results.

Proposed Solutions

The SACUA Faculty Grievance Procedures Task Force suggests modifications to the current procedures in only a few key areas:

1. Appeal to an elected faculty committee – (Faculty Grievance Committee, FGC) – 12 members, all to come from members of the Senate Assembly or chairs of Senate Assembly standing committees, 8 elected by the Senate Assembly, and 4 appointed by the President. No more than 3 of the 12 can be from one school/college of the University. The Final Appeal under current procedures is made to the Provost. The proposed revision would make the final appeal to the FGC rather than the Provost, as is the case in the UT Austin model (see Appendix). If both parties do not voluntarily abide by the decision of the FGC, the matter is turned over to the Provost for administrative resolution.
2. Informal Reconciliation – At present, informal efforts of reaching settlement of a dispute through the efforts of ombuds cease when a grievance is filed. Similarly, the Provost feels restricted from facilitating reconciliation because that officer has the strict function of hearing the final appeal. The proposed revision would encourage both the Central Faculty Ombuds and the Provost to help the parties reach a mutually agreeable settlement at any stage of the process.
3. Timeliness of the grievance procedure – The current process has a Faculty Grievance Monitor (FGM) who monitors the process, but has no power, and currently reports in writing unacceptable delays to the Director of Academic Human Resources (DAHR). The proposed revision would have the FGM report such delays in writing not only to the DAHR, but also to the newly formed FGC. The FGC shall have the authority, if necessary and by majority vote, to rule against the party responsible for inexcusable delays.
4. Fairness in proceedings – Currently, the Grievant may not always have complete access to relevant information and records. It is proposed that in the revised procedure, to ensure fairness, the grievant have complete access to all relevant information and records that will be used in decision-making by the Grievance Review Board (GRB).
5. Composition of GRB – Because common sense and experience have demonstrated an apparent conflict of interest when GRB members are faced with ruling against an administrator within their own college/school who may subsequently affect their merit reviews and professional opportunities, the proposal is to constitute the GRBs from the members of the FGC, no one of which can be from the college/school in which the grievance arises unless the grievant expressly waives this condition.

Following, we propose specific changes to the current grievance procedures (see <http://www.umich.edu/~sacua/Facres/gdoc.html>) by referring to specific sections and paragraphs of those procedures.

+++++

[The following are MODEL procedures for faculty/administration dispute resolution, including grievance procedures, approved by SACUA, Senate Assembly, the Provost and the Academic Program Group (Deans).]

[In 1998, each academic unit on the University's Ann Arbor campus formally approved these procedures. However, a few units made modifications appropriate for their particular needs. For more accurate reference, please obtain current Faculty Appeals Procedures for your unit through the office of your dean or with the assistance of the Faculty Senate Office at 764-0303.]

**MODEL FACULTY APPEAL PROCEDURES FOR SCHOOLS, COLLEGES,
AND ACADEMIC UNITS** [1998 version with 2003 revisions and April 2006 change
in the *FACULTY GRIEVANCE APPLICATION FORM*]

The appeal procedures outlined below are available to instructional staff members, both regular and supplemental, and primary research staff, qualifying as faculty members under Regental Bylaw 5 (revised March, 1998): "The term faculty shall include members of the teaching and research staff together with the executive officers, the directors of various teaching, research, and library units, research scientists, curators, and persons with similar duties."

These procedures are available, under the conditions specified below, to faculty members of the academic units (defined as the schools, colleges, research units or related unit), hereinafter referred to as faculty, who have disputes or complaints concerning any aspect of their employment.

It is the intent of these appeal procedures to provide a prompt and humane review of academic unit or departmental action so that, if mistakes have been made, they may be corrected, or alternatively, if action taken was proper, it may be better understood by the person affected. It is intended that informal consultation will resolve most problems and that these appeal procedures will apply only when informal methods have failed.

These procedures are not the proper forum to address issues that arise between faculty members, or groups of faculty members, or between faculty members of one unit in regard to treatment by another unit or by administrators of another unit. The SACUA Faculty Hearing Committee, although infrequently used, was created by the Senate Assembly in 1987 to address complaints of this nature.

INFORMAL PROCEDURES

Role of Unit Faculty Ombuds

A member or members of the tenured faculty will be elected by the academic unit faculty to serve a two-year term as Faculty Ombuds. The academic unit Faculty Ombuds exists to assist in the resolution of disputes. On request the Ombuds will provide information about grievance procedures. The Dean may, in addition, direct the department or the college Executive Committee to reconsider a dispute if the Dean thinks a mistake in

evaluative judgment may have occurred. No action by the Ombuds or the Dean, however, will deny a grievant continuing access to the prescribed appeal procedures.

Role of Central Faculty Ombuds

The Central Faculty Ombuds is selected by the Provost with the advice of elected Central Faculty Governance. The Ombuds' function is to facilitate the resolution of faculty problems and dilemmas with respect to policy administration or conflict resolution by working closely with the faculty ombuds of the schools and colleges. The Central Ombuds also can work with the Office of the Provost to seek informal, voluntary reconciliation of disputes at any stage, including after the onset of formal grievance procedures. No action by the Ombuds or the Provost, however, will deny a grievant continuing access to the prescribed appeal procedures.

Role of Consultation and Conciliation Services [Mediation Services]

The Consultation and Conciliation Services [Mediation Services] provides a neutral, informal, and private avenue for University faculty to discuss work-related conflicts, explore non-adversarial problem-solving, and resolve disputes. Continuation with this Service is voluntary on behalf of all parties to a dispute. No action by The Consultation and Conciliation Services [Mediation Services] will deny a grievant continuing access to the prescribed appeal procedures.

FORMAL PROCEDURES

Elements of a fair hearing:

A fair hearing must provide a full review with the following set of elements:

- The opportunity to be heard is the fundamental requisite.
- Impartial decision makers are essential.
- The hearing must be at a reasonable time and it must be held in a reasonable manner.
- There must be opportunity for oral presentation so that grievant can mold arguments to issues the decision makers seem to regard as important, particularly where credibility and veracity are at issue.
- There must be adequate opportunity to confront and cross-examine adverse witnesses.
- When administrative actions harm a grievant and the reasonableness of the action depends on fact-findings, all evidence used to prove the administration's case must be disclosed to the grievant so that he has an opportunity to prove it is untrue. This opportunity for rebuttal requires that evidence be exchanged in advance of the hearing.
- This is important not only for documentary evidence, but even more so when evidence consists of testimony from individuals whose memories may be faulty, or whose statements may be untrue or subject to questionable motive.
- Decision makers' conclusions must rest solely on the rules and evidence adduced at the hearing.

- Decision makers must state the reasons for their determination and indicate the evidence relied upon.
- Grievance Review Boards (GRBs) should have limited ability to dismiss a grievance without affording a grievant the opportunity for a hearing on the merits of his/her cause.
- Decisions by the GRB must not be ignored by administrative officers.
- There must be meaningful consequences for non-compliance with stated rules by participants or the GRB itself.

General Principles

Full and truthful participation. These procedures are designed to provide a fair internal mechanism for resolving disputes of faculty members. The success of these procedures depends upon willingness of all members of the University community to participate when asked and to participate truthfully.

Uniform treatment throughout the University. All units are encouraged to adopt the procedures outlined in this document, amended as necessary to conform with unique features of a unit.

Confidentiality. As an internal review related to individual employment-related problems, all aspects of the review under these procedures are intended to be confidential. All parties and participants will hold these matters in confidence, to the extent permitted by law.

Respondents. When the grievance involves a decision made by a group of persons (e.g., a department or committee), there will still normally be only one respondent. The respondent will be the person who has the current ultimate authority to make decisions in that matter in the group (e.g., the current chair or the dean; the person whose signature authorizes a decision). Individuals may be named respondents only for issues in which they are alleged to have had direct involvement or responsibility.

A. Access to the Grievance Procedure

A-1. Eligible grievants. These procedures are available to personnel of the academic unit qualifying as faculty members under Regental Bylaw 5 (revised March, 1998).

A-2. Grievable matters. These procedures are available when there is a charge that the academic unit or department has reached a decision concerning any aspect of an eligible grievant's employment, including in particular discrimination and violations of academic freedom, that is illegal or manifestly unfair. The academic unit is, and departments are, expected to rely on decision-making procedures that are fair, ~~and~~ commonly known, and applied consistently among faculty.

Grievances brought pursuant to this document may challenge all aspects of the decision-making process, except decisions shown to be based solely and exclusively on judgments about professional competence (e.g., in the tenure decision-making process), which shall remain the province of a grievant's units of appointment.

These procedures shall be available only in the context of matters of concern to a specific individual; challenges to unit or University policy should be handled through normal governance and/or administrative processes.

These procedures are not available for claims that are patently frivolous or without merit.

A-3. Timing of request. Within 180 calendar days of the date the grievant first knew or could reasonably have been expected to know, on the basis of documentation, of the decision or event that gave rise to the grievance, the grievant must request the formation of a formal review board, by filing a Faculty Grievance Application Form. In extraordinary cases, and by appeal to the FGC, a Grievance Review Board may extend the deadline for initiating a formal review.

B. Informal Discussion Required for Formal Proceeding

B-1. A grievant must first try to resolve a dispute by discussing it informally with the person (or persons) who made or affirmed the disputed decision or who, within the relevant unit or units, has the authority to provide redress. The college and central Ombuds who exists, among other reasons, to provide information about grievance procedures will, on request and with the consent of all parties concerned, attempt to resolve disputes at this level.

B-2. The grievant should read the grievance policy of the academic unit and may explore resolution through the Consultation and Conciliation Services [Mediation Services] in the Human Resources and Affirmative Action Office.

B-3. Efforts to resolve a dispute informally may continue despite the commencement of formal review under Section D., below.

C. Definition of Roles and Responsibilities

C-1. Grievant The grievant agrees to abide by all procedures outlined in this document, to participate in good faith, and to respect the confidentiality of the process.

C-2. Respondent The respondent agrees to abide by all procedures outlined in this document, to participate in good faith, and to respect the confidentiality of the process.

C-3. The Faculty Grievance Committee (FGC) and the Grievance Review Board (GRB).

The Faculty Grievance Committee (FGC) is a twelve member committee constituted from the elected members of the Senate Assembly plus chairs of the standing Senate Assembly committees, with 8 members elected by the Senate Assembly, and 4 appointed by the President. No more than 3 of the 12 can be from one school or college. FGC members shall serve 3 year terms, with terms staggered so that one fourth of the committee retires each year. FGC members may not serve consecutive terms.

The GRB is a committee of faculty whose composition is described in D-4. The GRB's first role is to decide whether a case is grievable (see D-5), and if so, it hears the case in a fair and timely manner according to the procedures outlined in Section D.

~~C-4. Director of Academic Human Resources (DAHR) is the Provost's representative in this process. The DAHR maintains the confidential files, ensures that any documents used in the hearings and procedures are available to both respondent and grievant, notifies in writing all relevant parties of failure to meet subscribed deadlines and seeks compliance. If one party repeatedly fails to meet deadlines, or if the DAHR in consultation with the FGM (defined in C-5) decides that there are undue delays, and they believe no further attempts on their part will be productive, they will notify the Provost in writing.~~

C-4. The Faculty Grievance Monitor (FGM) is a tenured member of the instructional faculty who is appointed annually by SACUA to monitor all grievances. He/she receives a copy of the Faculty Grievance Application Form (FGAF), and monitors timing of deadlines at each step of the process listed in C-7. The Director of Academic Human Resources (DAHR) is the Provost's representative in this process. If the FGM identifies unacceptable delays, then he/she notifies the FGC and DAHR in writing. ~~The FGM will not be actively involved in the process, but will collect the data listed in C-7.~~

C-5. ~~The DAHR-FGM will keep a record and provide written notification to the Executive Assistant to SACUA-Faculty Grievance Committee (FGC) and the Director of Academic Human Resources (DAHR), for use by the FGM (described in C-5),~~ of the following:

- a. date of establishment of GRB
- b. date of decision by GRB to proceed or not to proceed with a review
- c. letter notifying the grievant and respondent of the first day of the hearing
- d. dates of meetings, and extensions, if granted

- e. date that the GRB issues a provisional recommendation to the grievant and respondent
- f. date that the GRB issues a final decision
- g. date of Dean or Director's response to GRB decision
- h. notice of any appeals and whether the appeal is procedural or substantive
- i. date of establishment of Appeal Board
- j. ~~if a procedural appeal, then date of action of Appeal Board~~
- k. ~~date of Dean or Director's response to Appeal Board decision~~
- l. ~~if a substantive appeal, then date of response by Dean or Director~~
- m. ~~date of filing a final written appeal, if made~~
- n. date and evidence of implementation of GRB or Appeals Board decision
- o. date of withdrawal of grievance in the event that informal reconciliation is achieved

The FGM will also retain on behalf of the FGC and provide to the DAHR copies of the following documents:

- a. GRB final decision
- b. Dean or Director's response to GRB decision
- c. appeal decision

C-6. The FGC will maintain one copy of the confidential file, ensure that any documents used in the hearings and procedures are available to both respondent and grievant, notify in writing all relevant parties of failure to meet subscribed deadlines and seek compliance with the rules and expectations of the grievance procedure. Any alleged irregularities or non-compliance with rules must be appealed to the FGC within 5 working days of discovery. The FGC shall have the authority, if necessary and by majority vote, to rule against the party responsible for delays or other violations of the grievance procedures.

~~C-7. In order to allow for the independent monitoring of the adequacy of the process by the FGM and with the concurrence of the grievant (as noted on the FGAF), the DAHR will promptly provide copies of the following documents to the Executive Assistant to SACUA, for the confidential use by the FGM:~~

- ~~a. GRB final decision~~
- ~~b. Dean or Director's response to GRB decision~~
- ~~c. procedural appeal decision~~

- ~~d. Dean or Director's response to procedural appeal decision~~
- ~~e. substantive appeal decision~~
- ~~f. Dean or Director's response to substantive appeal decision~~
- ~~g. final decision~~

~~These documents will be used solely by the FGM for the purpose of creating an independent institutional memory of the process and assessing the adequacy and performance of the process across all units and over time.~~

C-7. Director of Academic Human Resources (DAHR) shall be the Provost's representative in the grievance process and will maintain a second copy of the confidential files. The Provost will use his or her authority to assure the full cooperation of administrators in the grievance process.

D. Formal Review

D-1. Grievant's request. The request must be submitted to the Dean, ~~and the Director of Academic Human Resources (DAHR), and the Faculty Grievance Monitor (FGM)~~ in writing on the Faculty Grievance Application Form (FGAF).

~~D-2. Level of Forum. While the grievant may have the option of having a grievance heard within the department, if departmental rules provide for this, the procedures in this document pertain to grievances handled at the academic unit level.~~

D-2. Action by the ~~academic unit~~ Faculty Grievance Committee. Upon receipt of a Faculty Grievance Application Form (FGAF) for a formal Grievance Review Board (GRB), the ~~Dean or Director~~ Faculty Grievance Monitor must notify in writing the grievant and the respondent, the Dean or Director of the grievant's academic unit, the Director of Academic Human Resources (DAHR), and the Faculty Grievance Committee (FGC). ~~in writing within ten working days and initiate the process to designate the academic unit members for the Board, (as provided for under section D-4.b. below). Within ten working days of receipt of the grievant's request, the Dean or Director also notifies the Provost or designee that a cognate member is required (D-4.b.). The FGC must then, within ten working days, designate a Grievance Review Board (as provided for under section D-3.a. below). Once the Board is established, it shall meet within 15 working days. If ten working days have passed after the request for a formal Grievance Review Board and the Dean or Director has not: a) notified the grievant and respondent that the GRB has been established; b) has not set in motion the process of designating the academic unit members of the GRB or; c) has not notified the Provost that a cognate member is required, then the grievant may submit the request for a formal GRB to the Provost. The Provost must then notify, in writing, the respondent and the Dean or Director of the grievant's request and inform all parties, in writing, of the steps taken to set in motion a similar process of designating the academic unit members for the GRB within ten working days of receipt of the FGAF.~~

D-3. Composition of the Grievance Review Board

- a. ~~Two members of the GRB shall be chosen from among the faculty of the academic unit of the grievant. Each academic unit shall formulate written rules for establishing a list of potential grievance review panel members, taking into consideration the composition of its faculty in the different tracks (e.g., instructional, clinical, primary research scientist). In the case of a grievance brought by a librarian, the GRB panel shall be chosen from a list of faculty established in accordance with written rules promulgated by the University Library.~~

Within ten working days of receipt of the notice of a pending grievance, the FGC shall assemble from its membership a three member GRB, one of whom shall be chosen to chair the committee. The FGC should attempt to choose as chair someone who has training or experience in law or due process custom. No member of the GRB shall come from the school/college from which the grievance arises unless the grievant specifically waives this provision in his/her grievance application.

- b. At the request of a member of the GRB, that member may be excused from serving on the GRB by the remaining members. Members are expected to request to be excused if they have a family or significant personal or especially close professional association with one of the parties, or if they believe they cannot render an impartial and fair judgment. Excused members will be replaced.
- c. Either the grievant or the respondent can petition the FGC to excuse a member of the GRB for cause. The petition must explain the petitioner's reasoning that the member's inclusion on the GRB would be inappropriate. The FGC can accept or reject the petition. Excused members will be replaced.

D-4. Grievance Review Board's decision to review the case.

- a. The GRB, the grievant, the respondent, or the Dean or Director may initiate in writing a one-time review of the issues to be considered, in order to focus the process and make it more efficient. Such communications must be directed only to the ~~DAHR or designee~~ FGC, and may be made at any time in the hearing process, but just once. Communications from the grievant, respondent or the Dean or Director may not be shared with the GRB until the other party has had ten working days to respond in writing. During those ten working days, the GRB shall only be informed that correspondence regarding focus or limitation of issues is taking place, without otherwise revealing the substance of the

communication. If facts or other issues remain in dispute and are not resolved in this exchange of correspondence, the GRB shall initiate hearings.

- b. At its first meeting, the GRB will consider ~~The first meeting shall begin with an executive session of the three members of the GRB, at which the GRB will decide whether the grievant's complaint is grievable within the scope of Section A, above. The grievant and respondent have the right to attend and make arguments at this meeting.~~ The GRB may also suspend formal review for up to 30 working days while the grievant and respondent, with the assistance of the chair of the GRB, the Central Ombuds, or the Office of the Provost pursue alternative resolution of the complaint pursuant to Section B, above, or while a review as outlined in Section D-5.a. takes place. In addition, the GRB may dismiss the grievance without hearings or review of evidence only if, on the basis of the FGAF, additional grievance materials, and the responses, and other evidence before the GRB, with all questions of fact assumed in the grievant's favor and all such evidence viewed in the light most favorable to the grievant, there is no basis for deciding the grievance in favor of the grievant. In such case, the GRB shall write a report detailing its dismissal, and the reasons for its decision.
- c. Within ten working days of its first meeting, the GRB must inform the grievant, the respondent, and the Dean or Director FGC in writing whether it will proceed with the review. If it decides the complaint is not grievable in whole or in part, it must state its reasons. ~~If it decides to proceed, it shall specify in writing where and when the review will be held and the issues it will consider, along with the reasons for declining to consider any issues raised by the grievant.~~ The GRB shall then confirm that the grievant and the respondent have been furnished a copy of this document. The grievant shall then have five working days to appeal the decision to the full FGC, and the FGC shall have an additional five working days to consider the appeal. The FGC can either affirm the decision of the GRB, or it can instruct the GRB to hear the matters that were appealed.
- d. If the GRB decides to proceed with a hearing, it shall specify in writing where and when the review will be held and the issues it will consider. The GRB shall then confirm that the grievant and the respondent have been furnished a copy of this document.

D-5. Parties' rights. For formal GRBs, the grievant and the respondent shall have the following rights:

- a. To have access to all relevant evidence except confidential evaluations and evidence that would infringe upon the privacy interests of third parties (see paragraph 1314, below).
- b. To appear and present their cases, including evidence and witnesses, to the GRB.

- c. To question all witnesses who testify before the GRB. Anyone called to testify or otherwise participate is expected to comply, and to state truthfully and completely all information known first-hand to them that is requested by any of the participants during a grievance review session.
- d. To be accompanied before the GRB by advisers, who may be attorneys. Except for advising their clients, the advisers may not participate at the review.
- e. The GRB may request legal advice, to be provided by an attorney chosen by the FGC. ~~the Office of the Vice President and General Counsel.~~ ~~The Office of the Vice President and General Counsel assumes responsibility for ensuring that the attorney who advises a GRB can and will provide unbiased legal advice and be free of any conflict of interest.~~

D.6. The grievance review sessions shall be private, attended only by members of the GRB, and the principal parties or designees approved by the GRB ~~and the Director of Academic Human Resources or designee.~~ Witnesses will attend only during the period of their testimony. Legal counsel, if requested by the GRB, and advisors of principal parties may attend. The GRB chair, grievant, respondent, ~~the DAHR or designee~~ and all members of the GRB shall attend all sessions of the GRB at which evidence is taken or arguments heard. The GRB members shall not discuss the case or evidence presented except at a regular GRB session. The GRB chair may invite appropriate observers or others having a substantial interest in the outcome of the case, upon mutual consent of the grievant and respondent. All proceedings will be confidential.

D-7. Those portions of the review at which testimony is taken shall be recorded verbatim, which recording may be by voice tape recorder, etc. A complete transcript of the oral testimony shall be provided at the expense of the University at the request of the GRB, grievant or respondent. The GRB, grievant and respondent must have ample opportunity to review the transcript before making further submissions or decisions. Both grievant and respondent may also record the testimony.

D-8. As a general rule any evidence or testimony attributed to a witness must be personally presented by the witness. Under no circumstances will evidence be considered that is presented outside a GRB hearing. Because of the informal nature of the hearing process under these procedures, both the grievant and respondent should be given as much latitude as possible in presenting their cases. However, in weighing evidence and testimony the GRB should give greater weight to documents and firsthand knowledge as opposed to second-hand or hearsay testimony. The GRB shall abide by generally accepted rules of confidentiality, collegiality, and privilege. Unduly repetitious or irrelevant evidence may be excluded. The chair of the Grievance Review Board shall decide what evidence will be heard or excluded. A decision to exclude evidence can be appealed by either party to the FGC.

- D-9.** The GRB may consult with the FGC DAHR or designee at any time concerning questions of procedure.
- D-10.** The Chair of the GRB has full authority to assure an orderly and expeditious proceeding. Any person who disrupts a review or who fails to adhere to the rulings of the GRB may be excluded from the proceedings.
- D-11.** The GRB shall be permitted to call its own witnesses and request documents.
- D-12.** In reviewing the grievance, the GRB may address specific instances where there appears to be a violation of academic freedom, or discriminatory, illegal or manifestly unfair conduct, even if the grieved action appears to be in conformance with existing unit or University policies.

~~D-14. The grievant, the respondent, and the GRB may not have direct access to confidential department or academic unit files. However, anyone of them may request—and the department or academic unit shall permit—the Chair of the GRB to examine relevant confidential files in their entirety and to provide the GRB with summary of their contents as they relate to the grievance, giving due consideration to protecting confidential aspects of the material. In instances where the GRB Chair believes it is critical for the GRB, grievant or respondent to examine a confidential document in its entirety, the GRB Chair should consult with legal counsel and may provide the document only when it has been determined that to do so is legally permissible.~~

D-13. Access to information.

a. Following the GRB’s decision to hear the case, the grievant may begin to request documents and other real evidence from the administration. The grievant shall be afforded an opportunity to obtain necessary witnesses and documentary or other evidence, and the administration shall assist in securing the cooperation of witnesses and make available any necessary documents and other evidence within its control. Both the grievant and the administration may obtain discovery of documents and other real evidence for purposes of inspection and copying. Such discovery may be obtained regarding any matter not privileged that is relevant to the issues before the GRB. Unless the party of whom the discovery is requested seeks an order of the GRB to limit the discovery, discovery will be facilitated through the cooperation and agreement of the parties.

b. If the party of whom discovery is requested believes that all or some of the requested material is not discoverable, or believes that the use of some or all of the requested materials should be limited, or believes that some or all of the requested materials should not be seen by certain persons, that party may petition

the GRB to relieve it of having to divulge the requested materials or to order limitations on the use of particular materials. The GRB may require that the requested material be filed with it in order that it may make reasonable disposition of the motion to limit discovery.

c. The GRB may infer from a refusal to produce relevant, non-privileged materials that if produced they would have damaged the position of the non-producing party in control of such materials.

d. Any data or written materials to be used by either the grievant or respondent at the hearing must be available to both parties and submitted to both the GRB and the opposing party at least 3 working days before the scheduled hearing. Materials and data not available to both parties shall be excluded from consideration by the GRB and may not be used by subsequent decision makers unless both parties have had the opportunity to examine the information before any relevant filings.

D-14. Burden of proof.

The burden of proof shall rest with the grievant to prove, by a preponderance of the evidence, that there was a substantial violation of the grievant's academic freedom, constitutional, statutory or contractual rights. However, if a grievant has established that such a violation has occurred, the burden of proof shifts. In particular, if a respondent then asserts that the challenged decisions reflect judgments about professional competence, the respondent acquires the burden of proving to the GRB, by a preponderance of the evidence, that the challenged decisions are in fact consistent with the criteria used by the unit in such decisions as applied to other faculty in the unit.

D-15. The grievant will have the opportunity and duty to open and close the presentation and argument or discussion, if any, to be made to the GRB.

D-16. After the review at which testimony is taken and arguments are heard from the grievant, respondent, and witnesses, the further deliberations and discussions of the GRB shall be private and confidential and shall not be recorded. In its report and any accompanying exhibits chosen by the GRB to substantiate its report, the GRB shall delete such portions of any record, as needed, to protect the interest of third parties or the confidentiality of evaluations. Such deletions must be noted in the report.

D-17. The GRB shall deliver only to the grievant and to the respondent a provisional decision within 15 working days after completion of testimony. At the same time, the Dean or Director will be notified of the delivery. The provisional decision shall include a written summary of the testimony, a statement of factual findings, and, if appropriate, a recommended remedy. The provisional decision must

contain sufficient justification and documentation that the grievant, respondent, and any additional party viewing the decision can reasonably understand the rationale for the decision. Decisions of the GRB shall be made by a majority vote. The reasons for a dissenting vote must be stated in a minority opinion. The grievant and the respondent shall have ten working days after receipt of the provisional decision to submit a written response to the GRB. The content of the provisional decision shall remain confidential and may not be shared at any time with any other parties except those defined in D-7., and the formal advisors of the grievant and respondent defined in D-6.d. and e.

D-18. The GRB shall consider any responses to the provisional decision and shall deliver its final decision within ten working days after receipt of those responses. The final decision shall include a written summary of the testimony, a statement of factual findings, rejoinders to issues raised in any responses, and, if appropriate, a recommended remedy. The final decision must contain sufficient justification and documentation that the grievant, respondent, and any additional party viewing the decision can reasonably understand the rationale for the decision. Decisions shall be made by a majority vote of the GRB. The reasons for a dissenting vote must be stated in a minority opinion. This confidential advisory decision and recommendation shall be presented by the GRB only to the grievant, the respondent, the FGC, the DAHR, the Dean or Director, and, if appropriate, the Review Committee of the academic unit and/or the department chair.

D-19. If the respondent or the grievant believes that the review was not conducted in accordance with Section D., above, the respondent or the grievant should notify the Dean or Director and the FGC immediately so that the Dean or Director can take this information into consideration before responding pursuant to E. (below). If the Dean is a respondent, the grievant or respondent should additionally notify the Review Committee, as defined in Section E, below.

E. Response by the Dean or Director

In cases where the Dean is not a respondent, the Dean shall respond in writing explaining the reasons for accepting or rejecting the GRB recommendation within ten working days of receiving the recommendation from the GRB.

In cases where the Dean is a respondent, within ten working days of receiving the GRB recommendation, the FGC ~~Dean~~ shall designate as a Review Committee any standing committee of elected faculty members (e.g., Executive Committee). In the case of the Law School, which has no standing committee of elected faculty members, the standing committee on tenure will serve as a Review Committee. The Review Committee shall review the GRB decision and advise the Dean, in writing within ten working days, as to whether he/she should accept or reject the GRB decision. If the grievant and/or a respondent ~~are-is a members-of~~ the Review Committee, he or she ~~they~~ will recuse him- or herself ~~themselves~~ from this review.

Within ten days after receiving the recommendation of the Review Committee, the Dean shall respond in writing explaining the reasons for accepting or rejecting the recommendations of the GRB and Review Committee.

Whether the Dean is a respondent or not, the recommendation of the GRB will represent the thorough consideration of all the facts and circumstances, and should be rejected only after very careful consideration.

The response of the Dean or Director and/or Review Committee shall go to the grievant, the respondent, the GRB, the FGC, the Provost, the DAHR, and, if appropriate, the department chair. If the response has not been delivered within the allotted time, the FGM shall consult with the DAHR, and if the response is not immediately forthcoming, the DAHR and FGM shall report this to the FGC Provost who shall have authority to require that the Dean or Director respond within five working days.

F. Appeal

F-1. Party's request. ~~If either the grievant or the respondent, or the Dean or Director, believes that the GRB's review was not conducted in accordance with Section D., above, or that there has been a substantial inequity in decisions, either any one of them may request review by an Appeal Board. The Appeal Board shall consist of the full Faculty Grievance Committee excluding the three members constituting the GRB. If the Dean is not a respondent, the request must be submitted in writing to and/or by the Dean or Director within 30 working days of the final decision of the GRB. If the Dean is a respondent, the request for appeal shall be submitted to the Provost, and the Provost shall fulfill the responsibilities assigned to the Dean in Sections F-2 through F-7. The written appeal must include the nature of the complaint, the facts supporting it, and the remedy sought.~~

F-2. Appeals Process. ~~The Appeal Board must meet within ten working days of receipt of a request for Appeal. Within 30 working days of receipt of the request, the Dean or Director shall appoint as an Appeal Board any standing committee of faculty members, including the Executive Committee, or an ad hoc committee of faculty members or faculty members and administrators. If the grievant and/or respondent are members of the designated Appeal Board, the Board shall be reconstituted to exclude them during consideration of the appeal. At the same time, the Dean or Director shall notify the grievant, the respondent, the members of the GRB, the DAHR, and, if appropriate, the Executive Committee of the academic unit in writing of the reasons for appeal.~~

F-3. Action by the Appeal Board. ~~Upon receipt of an appeal, the Appeal Board must meet within ten working days of its establishment by the Dean or Director.~~

F-3. Appeal Board Review. The Appeal Board shall consider the record of the formal review and ~~written or oral~~ statements submitted by the grievant and the respondent and may also make further inquiry.

~~F-4. Scope. The Appeal Board may allow the GRB's decision to stand, return the matter to the original GRB, duly establish a new GRB or take other appropriate action. The appellate review shall be limited to determining whether proper procedures were followed in the original review. If proper procedures were followed, the Appeal Board must so indicate, and the original GRB findings stand. Alternatively, cases may be returned to the original GRB or to a newly constituted GRB if specified procedural errors were substantial or if new and significant evidence became available that could not have reasonably been discovered before or during the original review. No other actions are within the province of an Appeal Board.~~

~~F-6. Appeal Board Decision. The Appeal Board shall deliver its confidential decision within 30 working days of its first meeting. The decision shall be written and include a statement of factual findings. The reasons for a dissenting vote must be stated in a minority opinion. This advisory decision and recommendation shall be presented to the grievant, the respondent, the Dean or Director, the GRB, the DAHR and, if appropriate, the Review Committee of the academic unit and/or the department chair.~~

~~F-7. The Dean or Director must respond in writing to this Appeal Board Decision within 14 working days from its receipt, explaining the reasons for accepting or rejecting its recommendations to all parties listed immediately above.~~

G. Substantive Appeal

~~G-1. Party's Request. In the event the grievant or respondent believes that there has been a substantial inequity in decisions, the grievant or the respondent may petition for redress. If the Dean is not a respondent, the petition must be submitted in writing to the Dean or Director by the grievant or the respondent within 30 working days of the date of receipt of the decision that is being appealed. If the Dean is a respondent, the petition shall be submitted to the Provost, and the Provost shall fulfill the responsibilities assigned to the Dean in Sections G-2 through G-3.~~

~~G-2. Scope. The Dean or Director may make further inquiry, seek advice from the unit's Executive Committee or other appropriate standing committee, allow the decisions to stand, return the matter to the original GRB (which shall be for the last time) or duly establish a new GRB (for a single review), which must be established using general procedures as outlined in D.~~

~~G-3. Action by the Dean or Director. The Dean or Director must respond in writing to the petition within 30 working days of receiving it, stating the action to be taken and the reasons for it, and must supply on the same date a copy of the response to the members of the GRB, grievant, respondent, and the DAHR.~~

H. Final Appeal

~~After exhausting academic unit grievance procedures and considering any consistent pattern to the prior decisions and appeals, if the grievant or respondent believes that there has been a substantial inequity, that person may petition by a single final written appeal to the Provost within 15 working days of the Dean's or Director's written response to the appeal. The Provost may direct further inquiry, allow the decision to stand, or take other appropriate action. The Provost's recommendations will be approved by the President.~~

G. Disposition

Unless the parties voluntarily accept and implement the GRB's or Appeals Board decisions, the FGC will transmit its decision in writing to the provost for ultimate administrative resolution, with copies to the relevant parties.

III. Extension of Deadlines for Events Listed in C-6

In extraordinary cases, or if the parties are attempting an informal resolution of the matter, the FGC DAHR in concurrence with the FGM may grant a reasonable extension of any of the deadlines established in C-6 when any of the parties, the GRB, or the Dean or Director requests the extension and adequately substantiates the need for it. As a general rule, extensions shall not be granted purely for convenience in scheduling.