

February 22, 2002

To:	Faculty Senate
Fr:	Robert Mitchell & APPC
Re:	Changes to Draft Faculty Grievance Policy Based On Senator Spece's Suggestions

APPC met on February 15 to consider Senator Spece's suggestions for changes to the Faculty Grievance Policy. APPC accepted three of these amendments without change, and offers compromise language in two other cases. These changes are outlined below, and come to the Senate along with the original draft (distributed to the Senate at the January meeting and in the packet for the February meeting) as a seconded motion from APPC.

The item numbers below refer to the numbered comments in the document Senator Spece distributed at the February 4 Senate meeting. Missing numbers indicate suggestions for change that APPC did not find acceptable; a separate memo will outline APPC's thinking on these issues.

Strikethroughs indicate original language deleted from the draft, while boldface type indicates new language inserted into the draft. Commentary on the changes appears in italics.

1. Page 1, Grievance Principle 4d, last sentence: "~~The grievant's right to further judicial appeal shall not be abrogated by this policy~~ **relief in the courts shall not be affected by this policy.**" *Discussion: APPC accepts Senator Spece's amendment as is.*
2. Page 1, Grievance Principle 4f, last sentence: "By using internal conciliation and hearing procedures first, the grievant should **ordinarily** be able to obtain acceptable results without escalation to a formal charge with an outside agency." *Discussion: The suggestion was to substitute "might" for "should." APPC believes that we should strongly encourage faculty to pursue internal procedures to remedy grievances, and believes that "should ordinarily" makes that point better than "might."*
4. Page 3, Grievance Principle 4u: "No faculty member or administrator can be a decision maker in a dispute in which he or she is a party, **or in which he or she has a conflict of interest.**" *Discussion: APPC accepts the amendment as is.*
6. Page 7, Grievance Hearing Procedures 7.b.iii.(2)(a), last sentence of the first paragraph on page 7: "This includes, **but is not limited to**, non-renewal of contracts, denial of tenure, promotions, sabbatical leaves, leaves, and disputes on the amount of salary due a non-tenured faculty member who has been suspended or dismissed before the expiration of the employment period." *Discussion: APPC accepts the amendment as is.*

9. Pages 9-10, Grievance Hearing Procedures 7.b.xii.(14), adding a new sentence at the end of this section: "An outside counsel may be obtained by CAFT from a list of qualified attorneys provided by the University to provide legal advice to the committee if the university attorney is precluded from providing advice to the committee because of a conflict or for other reasons. **The role of counsel is to give sound legal advice and assistance to the panel on the matter it is hearing.**"

Discussion: The proposal is that outside counsel must "affirm in writing that his or her role is to advise the committee as to how best fulfill the goals that the committee articulates, and this his or her role is not to represent the interests of the University as such." APPC rejects the concept of a signed loyalty oath as insulting and unprofessional. APPC also believes that the proposed formulation of the role of the outside counsel – "to advise the committee as to how best to fulfill the goals that the committee articulates" – is ill-advised. What if the committee told the attorney that its goal was to fire the grievant, or simply to get the whole process over as quickly as possible, without regard for due process? If the role of counsel needs to be defined, APPC prefers its own formulation, in bold, above.

February 22, 2002

To: Faculty Senate
Fr: Robert Mitchell & APPC
Re: APPC's Decision To Reject Several Of Senator Spece's Amendments To The Draft Faculty Grievance Policy

This memorandum outlines for the Senate the reasons why APPC, after serious consideration of some of Senator Spece's Amendments to the Draft Faculty Grievance Policy, cannot support those amendments. The item numbers below refer to the numbered comments in the document Senator Spece distributed at the February 4 Senate meeting. Missing numbers indicate suggestions for change that APPC accepted, in whole or in part; a separate memo describes APPC's position on these issues.

3. Grievance Principle 4t (page 3 of the draft Policy). Senator Spece suggests substituting the more stringent "clear and convincing" for "preponderance of the evidence" as the standard of proof in faculty grievance cases. APPC rejects this proposal for several reasons.

- "Preponderance of the evidence" is the standard of proof commonly accepted and used in employment law.
- "Preponderance of the evidence" is the standard of proof used by ASU and NAU in their faculty grievance policies.
- "Preponderance of the evidence" is the standard of proof used at the University of Arizona in ABOR Policy (ABOR 6-201.L.4.i.8, a copy of which was distributed to Senators with the call to the February, 2002, meeting) for cases involving dismissal or suspension without pay of faculty members at the UofA.
- Since "preponderance of the evidence" is the standard of proof in our very most serious grievance cases, it makes no sense at all to APPC to require a higher standard of proof in less serious cases.

5. Informal Resolution Procedures 6.c.ii (page 5). The proposal is to add the word "improper" in the phrase "within 6 months of the knowledge of the **improper** actions which form the basis of the complaint." APPC rejects this proposal, believing that the language of the policy should not prejudge whether the action was improper or not. APPC considered substituting "alleged improper actions," but ultimately decided to leave the policy as it stands, and to let the dispute resolution process determine which actions were and were not improper.

7. Grievance Procedures 7.b.xii.(3) (page 9). The proposal is to insert the term "bona fide" into the phrase "Unless **bona fide** overriding reasons under law or ABOR policy are given...." APPC believes that adding "bona fide" to the sentence is redundant. If the reasons weren't bona fide, they wouldn't be overriding under law or ABOR policy.

8. Grievance Procedures 7.b.xii.(6)(a) (page 9). The proposal is to delete this section, which reads "If neither party is advised or represented by counsel, and a university

attorney has not been involved in the case on behalf of either party, then a university attorney may provide legal advice to the grievance committee upon request.” APPC disagrees with the contention that “University counsel have an inherent conflict of interest.” Even assuming the worst about University Attorneys -- that they are always biased in favor of administrators in disputes with faculty -- where is the occasion for bias in a peer to peer grievance? In addition, a careful reading of this section reveals that it merely *permits* CAFT, if it so chooses, to request advice from the University Attorneys Office. It does not *require* CAFT to seek such advice, nor does it give the University Attorneys Office the right to offer unsolicited advice to CAFT. APPC believes that CAFT panels familiar with the individual cases in question are best positioned to determine whether they should rely on the University Attorneys Office for legal counsel, or to seek such counsel elsewhere.

10. Grievance Procedures 7.b.xii.(14) (pages 11-12). This proposal would change the information that the President gives to the grievant after the President issues his final decision on the grievance. The original language of the draft refers to a specific law that applies to judicial review of agency decisions. Senator Spece proposes to delete this specific reference (“the faculty member ... has 35 days from the date on which the decision becomes final to seek review of the decision in the superior court pursuant to the provisions of the provisions of the Administrative Review Act ...”) and replace it with a more general statement “...35 days from the date on which the decision becomes final to seek review of the decision **de novo, insofar as Arizona law does not prohibit that.**” As far as APPC can tell, this suggestion would replace useful and specific information with a less useful, less specific, and possibly more confusing phrase which appears to say to a faculty member: now you can begin anew in the courts, unless you can’t. APPC does not believe that this language improves the policy, and thus voted to reject it.

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January 25, 2002

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To: Faculty Senators

Fr: Robert Mitchell, Secretary of the Faculty



Re: Draft Faculty Grievance Policy

This memorandum is intended to highlight the important differences between the Faculty Grievance Policy passed by the Senate in March, 2001, and the draft which was distributed at the January 14, 2002 Senate meeting for consideration on February 4, 2002. It is common in these cases to use strikeouts, italics, bolding, etc., to indicate old language omitted and new language added. This particular document, however, has undergone a considerable rearrangement of its contents, as well as deletions and additions/revisions; and we felt that strikeouts and italics would result in an unwieldy and confusing document. So instead, Senators got a clean copy of the new draft, and a clean copy of the policy as passed last March. In addition, we distributed copies of ABOR policies which are referenced in the latest draft. This draft comes to you as a seconded motion from Academic Personnel Policy Committee (APPC).

To summarize, and to address specifically each of the six issues identified in a November 6 e-mail message, here is how APPC has resolved the major issues arising from the version of the Faculty Grievance Policy as passed by the Senate last March.

1. All deadlines (i.e., the amount of time between the onset of one phase of the grievance and the beginning of the next phase) are in conformance with ABOR policy.
2. CAFT's internal working procedures have not been included in this document.
3. The Grievance Clearinghouse makes decisions (based on ABOR policy and on the defined roles of the faculty committees) rather than recommendations about which committee or process will hear a faculty member's grievance.
4. The standard of proof in grievance hearings has been changed from "clear and convincing" to "a preponderance of the evidence," which is the common language of employment law.
5. CAFT has the option of seeking advice from the University Attorneys' Office, in cases where neither party is advised or represented by counsel, as long as the University Attorney's Office has not been involved in the case on behalf of either party. CAFT has the option of obtaining an outside counsel if the University Attorneys' Office has been involved in the case on behalf of either party. And CAFT has the option of obtaining a hearing officer from the American Arbitration Association (AAA) to conduct a hearing if both parties are represented by counsel.

6. Faculty have six months after learning of an action that has affected them adversely to initiate the grievance process.

What follows is a page by page, section by section, analysis of the major changes in the new version of the Faculty Grievance Policy.

Page 1

* In the "Purpose" statement, the new draft policy cites ABOR policy 6-201-N, which authorizes individual campuses to create individual grievance policies for grievances not covered in ABOR 6-201-L and 6-201-M. ABOR does not permit local modification of its policies for hearing procedures applicable to dismissal, suspension without pay or adverse actions concerning promotion, tenure or nonrenewal allegedly based on discrimination on unconstitutional action.

* Accordingly, this draft of the Faculty Grievance Policy omits language in the old version which addressed these sorts of grievances. Some of the difficulties we encountered with last year's policy arose when we attempted to paraphrase or modify language in ABOR 6-201-L or 6-201-M.

* Changes to the "Grievance Principles" section

* Principle A adds a sentence stating that "faculty members should have a reasonable amount of time to file a grievance." What constitutes a reasonable amount of time is addressed later in the policy, and will be explained below.

Page 3

* Continuing with changes to the "Grievance Principles"

* Principle R adds a reference to the University Committee on Ethics and Commitment, describing their role and sphere of operation.

* Principle S reinstates the Grievance Clearinghouse Committee (GCC) as a decision-making body, rather than an advisory body as the Senate voted last March. APPC felt strongly that not only are faculty better served by filing their grievances with the appropriate committee rather than shotgunning them at random, but also that creating an advisory body whose recommendations could be ignored would simply add a pointless layer of bureaucracy to the grievance process. If the Senate doesn't want the GCC to be a decision-making body, APPC recommends that it be deleted from the policy entirely.

* Grievance Principle T changes the standard of proof in grievance cases back from "clear and convincing evidence" to "a preponderance of the evidence." "A preponderance of the evidence" is the standard currently used by CAFT, and it is the commonly accepted standard in employment law. "Clear and convincing" may sound like it would afford more protection to rank and file faculty, but it could also work against them. Our mental model of a grievance is that it is something filed by a rank and file faculty member against an administrator. But administrators

can and do file grievances against rank and file faculty, and there are also peer to peer grievances filed. "Clear and convincing" might make it harder for an administrator to fire or discipline a faculty member, but it would make it equally hard for a faculty member to file a successful grievance against an administrator. APPC sees no reason why the Faculty Grievance Policy should deviate from normal employment law in this matter, especially when such a change could backfire.

* Point 5, "Grievance Resolution Procedures." The introductory paragraph alters the composition of the Grievance Clearinghouse Committee (GCC) by removing the Chair of UCEC. Our thinking was that UCEC should be kept separate from this referral process. We filled that slot on the GCC with a faculty representative selected by the Senate. We also made the vice-chair of CAFT a non-voting member of the GCC, so that the following year, when that person is chair of CAFT and thus ex-officio chair of GCC, he/she would have some familiarity with the workings of the committee.

Page 6

* Point b. (i.) defines the "reasonable amount of time" that a faculty member has to file a grievance as six months. This is a change from no time limits at all in the version of the policy that the Senate passed in March. Note that the six months clock doesn't start until the faculty member becomes aware that some action has had an adverse impact on him/her. This should address the classic "secret letter in the personnel file" situation. APPC supports a six months statute of limitations for two reasons. First, we don't want to encourage faculty members to brood for years, or potentially for decades, about a grievable wrong done to them. In addition to being unhealthy, it is contrary to the first Grievance Principle, which stresses a prompt and efficient resolution of problems. Secondly, an open-ended statute of limitations creates two practical problems that can work against the faculty member filing the grievance. The longer the time between the grievable action and the grievance, the more memories will fade, evidence will be lost, etc., so that the grievant will likely have a harder time proving his/her case. On top of that, after six months pass, the grievant begins to face reduced options for legal recourse outside the University grievance process, as external statutes of limitations begin to kick in. APPC believes that a six month window of opportunity, beginning after the grievant becomes aware of a harmful action, gives potential grievants time to get over the initial shock of such situations, to discuss the matter with colleagues and friends, and to make a decision about whether or not to pursue a grievance.

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* Point 6 c at the top of the page adds an option for CAFT to utilize a "hearing officer" from the American Arbitration Association to conduct the hearing. Note that the hearing officer does not participate in CAFT's deliberations or decision-making; and that AAA hearing officers are a standard part of the staff grievance process. CAFT was very enthusiastic about this change, believing that it will free them to focus on the content of the case.

DRAFT FACULTY GRIEVANCE POLICY APPROVED BY APPC 1/11/02

Grievance Policies and Procedures for Faculty

Purpose: To provide for hearing procedures for members of the General Faculty implementing 6-201(N) (See Arizona Board of Regents Policy Manual at 6-201(L) and 6-201(M) for hearing procedures applicable to dismissal, suspension without pay or adverse actions concerning promotion, tenure or nonrenewal allegedly based on discrimination or unconstitutional action.)

Source: *Arizona Board of Regents Policy Manual - 6-201*
Arizona Board of Regents Policy Manual - 6-301
University Handbook for Appointed Personnel (UHAP)

4. Grievance Principles

- a. The Board of Regents and the President, administrators and faculty of The University of Arizona (UA) recognize the importance of providing a prompt and efficient procedure for fair and equitable resolution of grievances without fear of prejudice or retaliation for initiating a grievance or participating in the grievance process. Faculty members should have a reasonable amount of time to file grievances to seek redress for perceived harm they have suffered.
- b. Each individual's attempt to rectify a perceived wrong is considered consistent with UA's role as an upholder of individual rights and the integrity of the University.
- c. The existence of a grievance process in no way diminishes the responsibility of faculty and administrators for the exercise of sound academic judgment.
- d. All grievants shall have clearly defined avenues of appeal and redress that may include mediation and/or a hearing before a faculty committee that reports to the President or his or her designee. The President decides the matter and his or her decision is the final agency decision. The grievant's rights to further judicial appeal shall not be abrogated by this policy.
- e. Faculty grievance procedures apply to general faculty as defined in the Constitution of the General Faculty, Article II.
- f. The preferred option is to resolve grievances internally at the level closest to the grievant. By using internal conciliation and hearing procedures first, the grievant should be able to obtain acceptable results without escalation to a formal charge with an outside agency.
- g. At each level of the grievance process, the committees or decision maker will advise the grievant of the options available for redress or

appeal as part of his or her decision if the grievance is not resolved at that level.

h. Cases under ABOR 6-201(J), 6-201(K) and 6-201(M) are not subject to this grievance procedure. In other cases, a grievant may request either a conciliation route that may then be followed by a grievance hearing or may directly choose a grievance hearing.

i. Faculty may choose to have a hearing on a grievance before a panel of their peers without counsel present. Alternatively, the faculty may choose to be represented by legal counsel present at his or her own expense in all hearings.

j. Each grievant has the right to a fair, and reasonably speedy investigation and judgment by members of the appropriate committee or office.

k. Two or more faculty members with the same grievance have the right to seek redress jointly or individually.

l. Grievance committees shall keep written records, as appropriate, which shall be equally available to all parties in the case, except privileged communications or documents that are confidential pursuant to state or federal laws or regulations. Committees are not required to keep records of deliberations.

m. All parties to a grievance are entitled to be kept informed of the status of their grievance in a timely manner.

n. Grievances involving faculty members who work off the main UA campus generally shall be handled by grievance procedures prescribed herein.

o. Grievants and witnesses are assured freedom from reprisals related to their testimony. A separate whistle blower policy describes whistle blower protections, and when those protections are applicable.

p. Allegations of sexual harassment will be referred to the University Equal Opportunity/Affirmative Action Office (EO/AAO) for investigation following the procedures developed by that office. A separate sexual harassment policy describes the policy and procedures.

q. Allegations of discrimination based on sex, sexual orientation, age, race, national origin, religion, disability and/or veteran's status will be referred to EO/AAO for investigation. Separate documents describe the policies and procedures. However, if a faculty member alleges that an adverse decision was based on unlawful discrimination other than that covered by ABOR 6-201(M), the faculty member may proceed to a CAFT hearing under this policy and these procedures following an investigation by the EO/AAO and appeal.

r. Issues of misconduct in research, scholarship, or creative endeavor; conflict of commitment, and facilities misuse are handled by the University Committee on Ethics and Commitment (UCEC) or other committees designated under a separate policy. In conducting inquiries on those matters, UCEC or other appropriate committees follow the applicable University policies on research integrity, professional commitment and proper facilities use.

s. Generally, if a conflict cannot be settled through the Ombuds or Conciliation process, a member of the faculty is best served by filing his or her grievance with the single and most appropriate committee or office. The Grievance Clearinghouse Committee will inform the parties which committee (Conciliation or CAFT) or process (EO/AAO) will handle the grievance.

t. No faculty member should be disciplined or have a finding made against that faculty member unless there is a preponderance of the evidence as to any disputed factual issues.

u. No faculty member or administrator can be a decision maker in a dispute in which he or she is a party.

5. Grievance Resolution Procedures

The Grievance Clearinghouse Committee shall be composed of the Chairs of the Committee on Academic Freedom and Tenure (CAFT), the Committee on Conciliation, and the Committee on Ethics and Commitment, a representative of the Equal Opportunity/Affirmative Action Office, and a faculty representative selected by the Faculty Senate. The Vice Chair of CAFT shall also serve on the Grievance Clearinghouse Committee as a non-voting member of the GCC. The Chair of CAFT will function as the ex-officio Chair of the Grievance Clearinghouse Committee. **[THIS LANGUAGE SHOULD ALSO BE INSERTED AS ONE OF THE FACULTY STANDING COMMITTEES, BEFORE SECTION I, WHERE COMMITTEES ARE DESCRIBED EARLIER IN BYLAWS.]**

a. The recommended starting point for resolving grievances is at the head or dean level, whichever is applicable. If, however, the grievant does not wish to follow this route, or this route has not provided acceptable resolution, a grievant has the option of using an ombudsperson, conciliation or a more formal grievance hearing process.

b. In most cases, faculty may choose an informal route (ombuds or conciliation), which may be followed (if necessary) by the grievance hearing route or the grievance hearing route alone. Grievances alleging discrimination (including sexual harassment) may be filed with either the Grievance Clearinghouse Committee (see section _____, for composition of Grievance Clearinghouse Committee) or directly with EO/AAO, but will be investigated in either instance by EO/AAO.

c. Informal problem resolution may be requested, or formal grievances may be filed if the grievant believes any of the following:

i. There has been a violation, a misinterpretation, or an arbitrary or discriminatory application of university policy, regulation, or procedure which, applied personally to that faculty member, infringes upon his or her privileges, responsibilities, or terms and conditions of employment, e.g., salary, teaching assignment, equipment access or other inequities; or

ii. He or she has been discriminated against on the basis of sex, sexual orientation, race, religion, national origin, color, age, disability and/or veteran's status; or

iii. There has been an infringement on his or her academic freedom.

d. The names of university ombudspersons, members of the Committee on Conciliation and members of the Committee on Academic Freedom and Tenure (CAFT) are available from the Faculty Center.

6. Informal Resolution Procedures

a. Introduction

Informal resolution procedures are provided for the faculty member who desires informal assistance in the resolution of a complaint. An Ombudsperson Committee member or members of the Committee on Conciliation are available to conciliate, and coordinate communication among the grievant, respondent, and others related to the complaint. The purpose of this process is to air differences between the parties and to resolve the complaint to the satisfaction of both parties without resorting to formal hearings. In some instances, upon agreement of the parties and contingent on the availability of resources, a professional mediator may be available to conduct dispute resolution. Informal resolution is strongly recommended.

b. Ombudsperson Committee

i. The purpose of the Ombuds Program is to provide informal assistance to prevent or resolve disputes or problems in a neutral setting, to facilitate communication, to preserve or improve working relationships and to create a better working environment.

ii. An Ombudsperson Committee member is a neutral individual who helps manage conflict or perceived conflict by listening and generating options to help the faculty member resolve his or her problem. The ombudsperson may work confidentially with one,

both, or all parties to reach a mutually satisfactory agreement and prevent disputes from escalating.

c. Conciliation Process

i. The Committee on Conciliation has jurisdiction to make inquiry and to meet and discuss any problem involving any member of the General Faculty in his or her relationship with the University. The committee may consult and advise but shall not conduct hearings. It is the duty of the committee, after careful investigation, to offer counsel to the person or persons involved.

ii. The faculty member seeking conciliation shall file a complaint with the Grievance Clearinghouse Committee within 6 months of the knowledge of the actions which form the basis of the complaint.

iii. The Grievance Clearinghouse Committee shall consider the request and refer to the appropriate committee Chair (e.g. Conciliation Committee).

iv. Counsel may not attend or participate in the conciliation. A grievant may have an adviser from the university community who has no personal knowledge of the matter, who may attend meetings and review written documentation.

v. The conciliator(s) shall have 15 days after assignment by the Grievance Clearinghouse Committee to contact the faculty member(s) followed by 30 days to try to resolve the conflict. Upon agreement of the parties, the Chair of the Conciliation Committee may extend the conciliation period by 30 days.

vi. The conciliation process results shall be summarized in a report prepared by the conciliator and sent to the parties.

viii. If a mutually satisfactory resolution results from the conciliation, the process ends. If the parties cannot resolve the differences, the grievant may, if he or she chooses, seek a grievance hearing with a request to the Grievance Clearinghouse Committee. The request shall be filed within 30 days of receipt of the conciliator's report.

7. Grievance Hearing Procedures

a. Whether or not a grievant has sought conciliation, he or she may request a hearing by a grievance hearing committee through the Grievance Clearinghouse Committee. If the grievance alleges unlawful discrimination not covered by ABOR 6-201(M), the grievant may file a complaint directly with the Equal Opportunity/Affirmative Action Office (EO/AAO) without first going through the Grievance Clearinghouse Committee.

i. Requests for hearings by a grievance committee should be filed with the Grievance Clearinghouse Committee at the Faculty Center.

ii. If the EO/AAO representative determines that the grievant's case contains an allegation of unlawful discrimination, the grievant's case shall be referred to the EO/AAO. If the EO/AAO representative determines that the grievant's case does not contain an allegation of unlawful discrimination, the remaining voting members of the Grievance Clearinghouse will determine which committee shall handle the grievance.

b. The grievance procedure will involve the following steps:

i. Within 30 days of receipt of the conciliator's report on matters that were the subject of conciliation or within 6 months of the grievant's knowledge of the occurrence of the actions which formed the basis for the grievance, the grievant shall make a written request for a formal hearing to the Chair of the Grievance Clearinghouse Committee.

ii. The request must be filed by the grievant by hand delivery or by certified mail, return receipt requested, at the Faculty Center and shall state: grievant's name, address, telephone number, a statement of the complaint, resolution sought, and the name and address of grievant's attorney, or a statement that grievant is proceeding without an attorney.

iii. The Grievance Clearinghouse Committee shall determine which committee (Conciliation or CAFT) or process (EO/AAO) will handle the case based on the following jurisdictional guidelines:

(1) Alleged discrimination.

If discrimination in employment, program, or activity based on race, color, religion, sex (including sexual harassment), national origin, age, disability, veteran's status, or sexual orientation is the basis for the grievance, the matter will be referred to the EO/AAO for consideration in accordance with the procedures established by that office.

(2) Other faculty grievances, including alleged infringement on academic freedom and tenure not covered by ABOR Policy Manual 6-201(M), will be handled by the Committee on Academic Freedom and Tenure (CAFT) under this policy.

(a) Under this policy, CAFT shall hear any faculty allegation that a decision affecting his or her employment relation with the university was not

determined in substantial compliance with regular university procedures, but only after any administrative appeal mechanism applicable to the decision in question has been exhausted. This includes non-renewal of contracts, denial of tenure, promotions, sabbatical leaves, leaves, and disputes on the amount of salary due a non-tenured faculty member who has been suspended or dismissed before the expiration of the employment period.

(b) CAFT shall hear other faculty grievances, such as alleged unfair treatment, where no policies or procedures exist or existing policies or procedures have been misinterpreted, misapplied, or violated by a university administrator.

iv. The Chair of the Grievance Clearinghouse Committee shall forward to the respondent the request for a hearing within 7 days after it is filed by the grievant, with instructions to respond within 15 days. If the grievant has indicated that he or she will be represented by counsel, the time for respondent to respond should be extended as needed in order for the respondent to seek the advice of counsel. The response shall contain the name, address, telephone number of respondent, a statement of respondent's position on the issue, and the name and address of the respondent's attorney if grievant elects to be represented by an attorney.

v. Within 15 days of receipt of the respondent's position statement, the grievant and respondent will receive written notification from the Chair of the Grievance Clearinghouse Committee as to which committee will hear the case and a statement of procedures of that committee.

vi. The Chair of the CAFT panel will set a hearing date in conjunction with all parties involved in the case. The hearing should begin within 60 calendar days of the date the grievance is assigned to the hearing committee. The 60-day period includes only the time when the university is in session. Semester breaks and summer recess are not included unless otherwise agreed to by the CAFT panel Chair and the parties. The parties shall receive notice of the hearing date at least 20 days before the hearing date. The notice shall include:

- (1) A statement of the time, place and nature of the hearing.
- (2) A statement of the authority and jurisdiction under which the hearing is to be held.

(3) A reference to the particular statutes, rules or policies involved.

(4) A short and plain statement of the matters asserted. If CAFT is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of issues involved. Thereafter upon application a more definite and detailed statement shall be furnished.

vii. A grievance shall not proceed if the grievant, after due notice, fails to be present or fails to obtain a continuance. A grievant may withdraw his or her grievance at any stage in the grievance procedure by writing the Chair of the committee designated to hear the grievance.

viii. If a grievant commences a grievance with an outside investigative agency based on the same or similar grounds, either the conciliator or the Chair of the hearing committee, depending on the stage of the complaint process of the internal grievance, will continue the internal process unless the grievant withdraws the internal grievance or desires a postponement.

ix. No later than 15 days before the hearing date, the grievant and respondent must provide written documentation, including exhibits, and a list of witnesses to the Chair of the hearing committee. The Chair may require additional written submissions such as a written opening statement prior to the hearing.

x. The Chair of the hearing panel shall send a copy of the written documentation and witness lists submitted by the grievant and the respondent to the panel members within three days after receipt. The grievant's witness list, exhibits and other required documentation will be forwarded to respondent and the respondent's witness list, exhibits and other required documentation will be forwarded to grievant by the Chair within three days after receipt of lists from both parties.

xi. Any member of the General Faculty requested by the committee to appear as a witness in its investigation of a complaint shall consider it an obligation as a General Faculty member to appear and testify. The Chair of the committee may call witnesses upon request of either party or on the Chair's initiative. The Chair may also require the production of books, records, and other evidence. Request shall be made either by personal delivery or by certified mail. The Chair of the panel of the Committee on Academic Freedom and Tenure hearing shall have the authority to issue subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence.

xii. CAFT has an important fact-finding role. The hearing may be conducted in an informal, collegial manner and without adherence to the rules of evidence required in judicial proceedings. To the extent possible, the hearing should be carried out in a non-adversarial, collegial way. Hearings by grievance committees shall be conducted according to the following rules:

(1) No fewer than three faculty members shall constitute a hearing panel. Members shall not participate in hearings when there is a conflict of interest.

(2) The hearing, but not the deliberations of the committee, shall be recorded on tape.

(3) Unless overriding reasons under law or ABOR policy are given to grievant, respondent, and other appropriate parties, all parties shall have access to all information that is presented during the hearing at no expense to them.

(4) The Chair of the panel shall keep the parties informed about the status of the grievance.

(5) Faculty may choose to have a hearing on a grievance before a panel of their peers without counsel present. Alternatively, the faculty may choose to be represented by legal counsel present at his or her own expense in all hearings. In cases involving faculty against an administrator or administration grieving against faculty, if the faculty member chooses not to be represented by counsel present at the hearing, then the administrator shall not have counsel at the hearing either. In cases involving faculty grieving against other faculty, either party may choose to be represented by counsel present at the hearing at his or her own expense. Any party may obtain legal advice and assistance in preparation for a hearing, even if a legal advisor will not be present at the hearing itself.

(6) Legal advice to the grievance committee.

(a) If neither party is advised or represented by counsel, and a university attorney has not been involved in the case on behalf of either party, then a university attorney may provide legal advice to the grievance committee upon request.

(b) An outside counsel may be obtained by CAFT from a list of qualified attorneys provided by the University to provide legal advice to the committee if the university attorney is precluded from providing

advice to the committee because of a conflict or for other reasons.

(c) At the discretion of the CAFT panel, when parties to the grievance are represented by counsel, a hearing officer secured under the university's agreement with the American Arbitration Association may conduct the hearing. The hearing officer assists the panel in developing findings, conclusions and recommendations during deliberations and may prepare the written report in consultation with the panel but does not participate in the decision-making process of deliberation.

(7) For good cause shown, upon request of either party or on the Chair's own initiative, the Chair may continue the proceedings to another time.

(8) The hearing shall be closed to the public except that the grievant may, at his or her discretion, demand that the hearing be open to the public.

(9) The grievant and respondent may be present during the hearing proceeding. Witnesses shall be excluded except while testifying.

(10) Generally, the committee will allow witnesses to testify and documents to be presented which are relevant and probative to the complaint or the response. The CAFT committee shall exclude irrelevant, immaterial or unduly repetitious evidence.

(11) Each party may present an opening statement of his or her position. Generally, the grievant will then present all of his or her witnesses and documents. The committee members may question the witnesses and parties and ask questions about documents presented throughout the hearing. The respondent may question the grievant and witnesses. After the grievant has presented his or her case, the respondent shall have an opportunity to present witnesses and documents, and the committee members may question the witnesses and ask questions about documents presented. The grievant may question the respondent and witnesses.

(12) At the completion of the hearing, including any closing statement or other written memoranda requested by the panel, the panel will deliberate and prepare a written recommendation. The recommendation shall include

findings of fact based exclusively on the evidence and conclusions, separately stated. Within 30 days of the conclusion of the hearing and receipt of all written documents requested of the parties, the panel will forward its recommendation to the President, who will make the decision. Upon good cause shown, the President may extend the recommendation date by an additional 30 days.

(13) Within 45 days of receipt of the Panel's recommendation and record, the President shall issue a written decision that includes findings of fact and conclusions, separately stated. Copies of the President's decision, including the CAFT recommendation, shall be mailed to CAFT and the parties. If the President cannot issue a decision within the 45-day period, the President will notify the parties within the 45-day period of a delay in the issuing of the decision, the reasons for the delay, and the date on which the decision can be expected.

(14) A faculty member who is dissatisfied with the President's decision may request reconsideration of the decision by filing a written request with the President no later than 15 days following receipt of the President's written decision. If no request for reconsideration is made, the President's decision is final at the expiration of the period in which to request reconsideration.

The request shall be based on one or more of the following grounds:

(a) irregularities in the proceedings, including any abuse of discretion or misconduct by the CAFT panel that deprived the faculty member of a fair and impartial hearing;

(b) newly discovered material evidence which with reasonable diligence could not have been presented at the hearing; or

(c) the decision is not justified by the evidence or is contrary to law.

If the faculty member requests reconsideration, the President will issue a final decision within 20 days of receiving a request for reconsideration.

The President's decision following the hearing shall advise the faculty member that he/she has 35 days from the date on which the decision becomes final to seek review of the decision in the superior court pursuant to the provisions of

the Administrative Review Act, Arizona Revised Statutes,
Sec 12-901, et seq.

Cross-References

For the composition of grievance committees, see "Academic Constitution and Bylaws."

For the Board of Regents' official conditions policy, see "Conditions of Faculty Service" and "Conditions of Professional Service."

Proposed Changes to the Constitution
March 5, 2001

CONSTITUTION OF THE GENERAL FACULTY OF THE UNIVERSITY OF ARIZONA

PREAMBLE

This Constitution sets forth the basic organization and processes through and by which the General Faculty of The University of Arizona shall function, within the scope of its authority and responsibility, under state law and the policies and regulations of the Board of Regents authorized by that law.

ARTICLE I
Responsibilities

The General Faculty has fundamental responsibilities in the areas of academic personnel policy; instruction and curriculum policy; research policy; student affairs policy; ethics and commitment; advice on budget and University support; and acts on such other matters affecting the welfare of the University as are brought for consideration in accordance with University policy.

The General Faculty shall exercise its authority through its elected representatives in the Faculty Senate, although the General Faculty shall retain appellate power over all official actions of the Faculty Senate as provided in Article VI, Section 1.

Nothing in this Constitution and Bylaws is intended to imply assumption of authority not vested in the General Faculty by state law or Board of Regents policy.

ARTICLE II
Members

~~Section 1.~~ A. For purposes of University government, the General Faculty of The University of Arizona is composed of:

- a-1. Individuals holding more than half-time appointments in teaching, research, and/or service including faculty members who hold tenured and tenure-eligible appointments, academic professionals holding continuing and continuing-eligible appointments, and lecturers and senior lecturers holding multi-year appointments, and who are recommended by the faculty of the appropriate academic unit, approved by the President of the University and/or ratified by the Board of Regents, as well as
- b-2. Those individuals who, based on the recommendation of the Committee on Faculty Membership, have been approved by the Faculty Senate for membership in the General Faculty, or
- e-3. Such persons in categories (a) and (b) who are on Emeritus status, or
- d-4. Certain ex-officio members: namely, the President of the University, the Vice Presidents and Associate Vice Presidents of the University, the Deans, the Associate Deans, the Registrar, the Associate Registrar, and the University Librarian.

~~Section 2.~~ B. No candidate for a degree at The University of Arizona shall be a member of the General Faculty.

~~Section 3.~~ C. This membership provision shall become effective July 1, 1987. It shall not be construed to remove from membership in the General Faculty anyone properly holding such membership on June 30, 1975. Individuals who inadvertently were given faculty status between July 1, 1975, and June 30, 1987, will be reviewed by the Committee on Faculty Membership as to their status as members of the General Faculty.

~~Section 4.~~ D. Members of the General Faculty are eligible to vote in matters of faculty government and to hold offices and to serve on committees established in accordance with this Constitution.

ARTICLE III Officers

~~Section 1.~~ A. The officers of the General Faculty shall consist of the Chair, Vice Chair, and Secretary.

~~Section 2.~~ B. Chair of the Faculty.

a-1. The Chair shall serve as:

- i-a. The chief executive officer of the General Faculty including serving as director of the Faculty Center.
- ii-b. The chief representative of the faculty before public and University bodies including the University administration, alumni, Arizona Board of Regents, and Arizona Legislature.

b-2. The Chair shall be elected by the General Faculty in odd-numbered years for a term of two years beginning May 1, and shall be eligible for re-election.

~~Section 3.~~ C. Vice Chair of the Faculty.

a-1. The Vice Chair shall:

- i-a. Preside over Faculty Senate meetings.
- ii-b. Serve as Chair of the Faculty Senate Executive Committee.
- iii-c. Perform any other duties as delegated by the Chair.

b-2. The Vice Chair shall be elected by the General Faculty in even-numbered years for a term of two years beginning May 1, and shall be eligible for re-election.

~~Section 4.~~ D. Secretary of the Faculty.

a-1. The Secretary shall:

- i-a. Review the minutes of Faculty Senate meetings prior to distribution.
- ii-b. Serve as Chair of the Committee on Faculty Membership.
- iii-c. Perform any other duties as delegated by the Chair.

- b-2. The Secretary shall be elected by the General Faculty in even-numbered years for a term of two years beginning May 1, and shall be eligible for re-election.

~~Section 5.~~ E. Resignation, absence, or incapacity of faculty officers.

- a-1. In the event of the temporary absence or incapacity of the Chair of the Faculty, his or her duties shall be exercised by the Vice Chair of the Faculty, or in the absence of both, by the Secretary of the Faculty.
- b-2. In the event of the resignation or permanent absence or incapacity of the Chair, the Vice Chair shall become the Chair if the remaining term of the Chair is six months or less. If the remaining term exceeds six months, a special election conducted by the Committee on Elections shall be held to fill the remaining term of the Chair.
- e-3. In the event of the resignation or permanent absence or incapacity of the Vice Chair or Secretary, the Chair shall appoint, subject to approval of the Faculty Senate at a regularly scheduled meeting, a replacement for the unexpired term of the Vice Chair or Secretary.

ARTICLE IV
Meetings

~~Section 1.~~ A. Regular meetings of the General Faculty shall be held at least once each year on the call of the President of the University.

~~Section 2.~~ B. Special meetings, limited to the purpose(s) stated in the call, shall be held:

- a-1. On the call of the Chair of the Faculty.
- b-2. On the call of the Faculty Senate.
- e-3. On written petition from members of the General Faculty, as specified in the Bylaws.

~~Section 3.~~ C. Five percent (5%) of the General Faculty shall constitute a quorum.

ARTICLE V
General Faculty Standing Committees

~~Section 1.~~ A. The Committee on Elections, the Committee of Eleven, the Committee on Faculty Membership, the Committee on Committees, the Committee on Budget and Strategic Planning, the Committee on Ethics and Commitment, the Committee on Facilities Planning, the Committee on Conciliation, and the Committee on Academic Freedom and Tenure, and such other committees as may, from time to time, hereafter be established shall be standing committees of the General Faculty.

~~Section 2.~~ B. The Committee on Elections shall conduct elections for offices and committee memberships of the General Faculty, and elections for Faculty Senators representing the several College Faculties in accord with procedures specified in the Bylaws.

~~Section 3.~~ C. The Committee of Eleven shall:

- a-1. Initiate, promote, and stimulate study and action dealing with and looking toward solution of situations and problems of interest and concern to the faculty and the University.

b.2. Make reports to the General Faculty or the Faculty Senate.

e.3. Speak for the General Faculty as and when authorized by the General Faculty.

~~Section 4.~~ D. The Committee on Faculty Membership shall interpret the provisions of Article II of this Constitution and Article I of its Bylaws and submit recommendations to the Faculty Senate for consideration and action. It shall be responsible for the establishment and publication of the annual census of the General Faculty as provided in the Bylaws.

~~Section 5.~~ E. The Committee on Committees shall recommend members of the General Faculty to the Chair of the Faculty for appointment or nomination to all committees of the General Faculty. Upon request of any administrative officer of the University, the committee shall also recommend persons for appointment to new or existing committees whose appointments lie within the discretion of such requesting officer.

~~Section 6.~~ F. The Committee on Budget and Strategic Planning shall represent faculty interests and responsibilities at all stages of budget preparation, policy making and strategic planning. It will serve as a resource for the Faculty Senate through regular reports, and responses to requests for information and advice, and to the various budget and planning committees throughout the University through joint meetings. The committee will conduct periodic open forums or hearings on budgetary and planning issues as a means of collecting information and soliciting faculty perspectives and comments.

~~Section 7.~~ G. The Committee on Ethics and Commitment shall deal with questions of misconduct in research, scholarship, or creative endeavor; conflict of commitment; and facilities misuse. In its deliberations it will use the current versions of the University policies on research integrity, professional commitment, and proper facilities use.

~~Section 8.~~ H. The Committee on Facilities Planning shall work with University staff planners and those under contract to assure that faculty concerns are included in planning for new buildings and other campus facilities, and accorded priority over architectural and public relations concerns.

~~Section 9.~~ I. The Committee on Conciliation and the Committee on Academic Freedom and Tenure shall be the faculty committees that conduct all investigations and/or hearings regarding recommendations against, or complaints and grievances by or against members of the General Faculty as hereinafter prescribed and not otherwise. (Certain preliminary steps for dismissal situations are described in Chapters 3 and 4 of the University Handbook for Appointed Personnel.) Principles of law and policy require that members of the General Faculty have a forum in which grievances can be aired and examined and a known and effective procedure by which this can be done. That procedure, involving the examination of a grievance by the professional associates of the member affected, must reflect both the requirements of the law and the usages and traditions of the academic profession. Such investigations and hearings as are undertaken require the judicious consideration of facts, but they are not and must not be limited by the considerations of judicial hearings. Rather, they are investigations and hearings conducted by professional peers, the purpose of which is to safeguard and protect not only the individual rights of the members affected but also the collective rights of members of the University community. Committees constituted for these purposes perform an indispensable function in providing the due process of law to which every member of the faculty is entitled.

a.1. The Committee on Conciliation shall have jurisdiction to make inquiry and to meet and discuss any problem involving any member of the General Faculty in his or her relationship with the University. This committee may consult and advise but shall not conduct hearings. It shall be the duty of the committee, after careful investigation, to offer

counsel to the person or persons involved. Following the completion of the conciliation process, the President of the University shall be informed of the results. In addition, if conciliation has been unsuccessful, both parties shall be notified accordingly in writing with the member being advised that the grievance at issue may be presented to the Committee on Academic Freedom and Tenure for further investigation and hearing.

b.2. The Committee on Academic Freedom and Tenure shall have jurisdiction to make inquiry and to conduct hearings in two general areas, namely: in regard to those matters contained in the Conditions of Service dealing with the contractual employment relationship between the General Faculty member and the University/Board of Regents; and in regard to any internal matters relating to grievances against or by any member of the General Faculty. The committee shall consider the protection of academic freedom and tenure as a principal obligation. ~~All hearings regarding complaints of and recommendations against members of the General Faculty shall be conducted by the committee, unless otherwise specifically provided for by the Code of Conduct. In particular, the committee shall review, investigate or hold hearings, as necessary, in those cases where there has been made any of the following:~~

- ~~i.a. a recommendation for dismissal or suspension of a tenured member of the General Faculty;~~
- ~~ii.b. a recommendation for release, dismissal, or suspension of a non-tenured or continuing-eligible member of the General Faculty prior to the end of the affected member's contract period;~~
- ~~iii.c. a claim of discriminatory or other unconstitutional action, including violations of due process or academic freedom;~~
- ~~iv.d. a claim of improper procedure in matters of performance review, sabbatical leave, or leave of absence.~~

~~The committee shall also act in those non-contractual situations where the following occurs:~~

- ~~v.e. a grievance or complaint made against or by a member or a group of members of the General Faculty that has not been reconciled by procedures available to the Committee on Conciliation;~~
- ~~vi.f. a referral to the committee for investigation and/or hearing has been made by the President of the University or the Board of Regents.~~

~~The following matters are not within the jurisdiction of the committee:~~

- ~~a.3. Non-retention at the end of an appointment period of a non-tenured or continuing-eligible member of the General Faculty (except as provided for in iii, above);~~
- ~~b.4. Suspension or removal of a member of the General Faculty from an administrative position (see University Handbook on Appointed Personnel, Chapter 5, and the Arizona Board of Regents Policy Manual, 6-101).~~

~~As soon as practicable within 90 days of receipt of the request for the hearing and after the conclusion of its hearing on the matter, the committee or its designated panel shall forward to the President of the University and to all concerned parties copies of its report, findings, and recommendations.~~

REPLACEMENT TEXT

3. The Grievance Clearinghouse Committee shall advise which committee (Conciliation, CAFT, or UCEC) or process (EO/AAO) will handle a case. The Grievance Clearinghouse Committee consists of the chairs of the Committee on Academic Freedom and Tenure, (CAFT), the Committee on Conciliation, the Committee on Ethics and Commitment, and a representative of the Equal Opportunity/Affirmative Action Office. The chair of CAFT will function as the ex-officio chair of the Grievance Clearinghouse Committee.

ARTICLE VI Faculty Senate

~~Section 1-~~ A. Functions. The Faculty Senate is the legislative body responsible to the General Faculty. Actions of the Faculty Senate may be appealed to the General Faculty by petition, under the provisions of the Bylaws, within eleven class days of the date under which Faculty Senate minutes reporting such actions were distributed to the General Faculty.

~~Section 2-~~ B. Membership. The Faculty Senate shall consist of elected and ex-officio members as provided in the Bylaws.

~~Section 3-~~ C. Officers. The Vice Chair of the Faculty shall preside over the Faculty Senate meetings and, in his or her absence, the Secretary of the Faculty shall do so.

~~Section 4-~~ D. Meetings. The Faculty Senate shall meet regularly the first Monday in each month during the academic year, except in September, when it shall meet the Monday after Labor Day, and in January, when it shall meet on the first Monday following the resumption of classes. Its meetings shall be open to the public, except when the body decides to meet in executive session, subject to appropriate state law. Additional meetings may be called by the President of the University or the Chair of the Faculty. The agenda of each meeting shall be set by the Executive Committee of the Faculty Senate.

~~Section 5-~~ E. The Faculty Senate shall establish such standing committees and such ad hoc committees as may be required.

ARTICLE VII The College Faculty

The general charge of each College is entrusted to its College Faculty, subject to the Board of Regents and the authority vested by the Board in the President of the University. Voting rights in College matters shall be accorded to General Faculty members as defined in Article II, above, and to such other individuals as the College Faculty may decide. Bylaws for each College determined by the Faculty Senate to be consistent with this Constitution and Bylaws should be established and adopted by the appropriate College Faculty and made available to each member, and a copy filed in the Office of the Provost and in the Faculty Center. In matters of faculty government, the Faculties within the College of Arts and Sciences shall be regarded as Colleges, and members of the General Faculty not included in a College shall be regarded collectively as a College (Non-College).

ARTICLE VIII
Parliamentary Authority

In all matters not provided for in the Bylaws of the General Faculty of The University of Arizona, the rules contained in the current edition of Robert's Rules of Order, Newly Revised, shall govern.

ARTICLE IX
Amendments

~~Section 1.~~ A. Constitution. Amendments to this Constitution may be proposed by the Faculty Senate or by petition to the Chair of the Faculty signed by five percent (5%) or one hundred (100) members of the General Faculty, whichever is smaller. The Chair of the Faculty shall send copies of such proposals to all members of the General Faculty and shall convene a special meeting of the General Faculty to consider them not fewer than ten (10) class days after distribution. The proposed amendment(s) shall then be submitted to a mail ballot of the General Faculty. A three-fourths majority of the votes cast is necessary for adoption. Immediately upon adoption, the amendment shall be transmitted by the President of the University to the Board of Regents, and shall take effect upon affirmation by that body.

~~Section 2.~~ B. Bylaws. Amendments to the Bylaws may be proposed by the Faculty Senate or by petition to the Chair of the Faculty signed by five percent (5%) or one hundred (100) members of the General Faculty, whichever is smaller. The Chair of the Faculty shall send copies of such proposals to all members of the General Faculty. Not fewer than ten (10) class days nor more than fifteen (15) class days after distribution, a mail ballot shall be distributed to all members of the General Faculty together with the arguments pro and con. A two-thirds majority of the votes cast is necessary for adoption. Immediately upon adoption, the amendment shall be transmitted by the President of the University to the Board of Regents, and shall take effect upon affirmation by that body.

ARTICLE X
Ratification

This Constitution and Bylaws shall be submitted to the General Faculty for approval by mail ballot. On approval it shall be forwarded to the President of the University. The Constitution and Bylaws will become effective when approved by the Arizona Board of Regents in accordance with Board Policy 1-113.

Proposed Changes to the Bylaws
March 5, 2001

BYLAWS OF THE GENERAL FACULTY
OF THE UNIVERSITY OF ARIZONA

ARTICLE I
Membership

~~Section 1.~~ A. Membership in the General Faculty is as defined in Article II, Section 1, of the Constitution.

~~Section 2.~~ B. During the fall semester of each year the Committee on Faculty Membership shall prepare and publish a membership list of the General Faculty, as of October 1.

ARTICLE II
Officers

~~Section 1.~~ A. The officers of the General Faculty shall consist of the Chair, Vice Chair, and Secretary as provided for under Article III of the Constitution of the General Faculty.

~~Section 2.~~ B. The Parliamentarian, who shall be appointed by and serve at the pleasure of the Chair of the Faculty, shall serve the needs of the General Faculty and the Faculty Senate.

~~Section 3.~~ C. The representatives to the Arizona Faculties Council shall be the Chair, Vice Chair, and Secretary.

ARTICLE III
Meetings

~~Section 1.~~ A. Written petitions of five percent (5%) or one hundred (100) members of the General Faculty, whichever is smaller, shall be sufficient to call a Special Meeting of the General Faculty. Such petition, presented to the Chair of the Faculty, shall state the purpose(s) of the intended meeting.

~~Section 2.~~ B. Notice of Meetings. Notice shall be given at least one week in advance of any meeting, and shall contain a copy of any substantive proposal to be presented.

~~Section 3.~~ C. Meetings of the General Faculty shall be open to the public except when that body decides to meet in executive session, subject to applicable state law.

~~Section 4.~~ D. Methods of Voting.

- a-1. At meetings of the General Faculty, voting shall be by viva voce, by a show of hands, by a rising vote, or by ballot, as decided by the presiding officer, provided, however, that it shall always be in order to move for a vote by ballot.
- b-2. By a majority vote at a meeting of the General Faculty the pending action may be subject to a mail ballot by the General Faculty.

ARTICLE IV
General Faculty Standing Committees

~~Section 1.~~ A. Committee on Elections. The Committee on Elections shall consist of three members of the General Faculty appointed by the Chair of the Faculty after consultation with the Faculty Senate Executive Committee, from among candidates recommended by the Committee on Committees, for three-year staggered terms. The committee shall elect its chair from those of its members who have served at least one year on the committee, and shall follow these procedures:

- a-1. Nomination of candidates. Candidates for elective office shall be nominated by petitions issued and accepted by the committee as follows:
 - i-a. Candidates for Chair of the Faculty, Vice Chair of the Faculty, and Secretary of the Faculty shall have signatures of not fewer than forty members of the General Faculty on their petitions.

- ii.b. Candidates for the Committee of Eleven, Senator-at-Large, the Committee on Committees, or the Committee on Budget and Strategic Planning shall have signatures of not fewer than twenty members of the General Faculty on their petitions.
 - iii.c. Candidates for Senator representing a College Faculty shall have the signatures of not less than ten percent (10%) of the members of their College Faculty on their petitions, except that a minimum number shall be the signatures of three College Faculty members, and the maximum need be no more than twenty.
 - iv.d. Candidates shall affirm in writing their willingness to hold office.
 - v.e. The Committee on Elections shall verify the eligibility of each nominee.
- b-2. Conduct of elections:
- i.a. The Committee on Elections shall notify the General Faculty no later than January 15 each year of elective offices to be filled that year.
 - ii.b. The committee shall issue nominating petitions beginning January 15 and ceasing the last class day preceding February 1 for appropriate offices.
 - iii.c. The Committee shall accept completed nominating petitions through the two weeks immediately following the final day of issuance; no nominating petitions shall be accepted after the close of business on the tenth class day following the final day of issue.
 - iv.d. The Committee shall conduct primary elections for elective offices no later than March 1, allowing ten class days from the date of mailing the ballots for members of the General Faculty to mark and return their primary election ballots.
 - v.e. The Committee shall notify members of the General Faculty of the results of primary elections no later than March 22.
 - vi.f. The Committee shall conduct general elections for faculty offices no later than April 1, allowing ten class days from the date of mailing the ballots for members of the General Faculty to mark and return their election ballots.
 - vii.g. The Committee shall notify the General Faculty of the results of the general election no later than April 25.
 - viii.h. In the event of a tie vote the decision shall be made by lot.
- e-3. Election of candidates:
- i.a. Chair of the Faculty, Vice Chair of the Faculty, or Secretary of the Faculty: A candidate who receives a majority of the votes cast in the primary election shall be declared elected. When no one receives a majority of the votes in the primary election, the two candidates receiving more votes than anyone else will be nominated for the general election ballot. That candidate receiving the majority of general election votes shall be declared elected.

- ii.b. Faculty Senate, at-Large: If forty or fewer, but more than twenty are nominated, the twenty nominees receiving the largest number of votes in the primary election shall be declared elected. If more than forty are nominated, the forty receiving the largest number of votes in the primary election shall be candidates on the general election ballot provided only that anyone who receives a majority of votes in the primary election shall be declared elected. The candidates receiving the largest number of votes in the general election shall be declared elected to the positions to be filled.
- iii.c. Faculty Senate, College Representatives: If the number of nominees from a College is not more than twice the number to be elected, those candidates equal in number to the number of positions to be filled who receive the largest number of votes in the primary election shall be declared elected. If more than twice the number are nominated, those receiving the largest number of votes in the primary election, totaling twice the number of positions to be filled, shall be candidates on the general election ballot, provided only that any candidate who receives a majority of votes in the primary election shall be declared elected. Nominees receiving the largest number of votes in the general election shall be declared elected to the positions to be filled.
- iv.d. Committee of Eleven: If more than ten are nominated for the Committee of Eleven, the ten nominees receiving the largest number of votes in the primary election shall be candidates on the general election ballot, provided only that any candidate who receives a majority of votes in the primary election shall be declared elected. Nominees receiving the largest number of votes in the general election shall be declared elected to the positions to be filled.
- v.e. Committee on Budget and Strategic Planning: If more than four are nominated for the Committee on Budget and Strategic Planning, the four receiving the largest number of votes in the primary election shall be candidates on the general election ballot, provided only that any candidate who receives a majority of votes in the primary election shall be declared elected. The nominees receiving the largest number of votes in the general election shall be declared elected to the positions to be filled.
- vi.f. Committee on Academic Freedom and Tenure: Names of members of the General Faculty who have been nominated in accord with the provisions set forth in Article IV, Section 9, of these Bylaws for membership on the Committee on Academic Freedom and Tenure shall be included on the ballot for primary election each year.

~~Section 2.~~ **B.** The Committee of Eleven shall be composed as follows: ten members of the General Faculty, five of whom are elected by the General Faculty each year for a term of two years; the Chair of the Faculty shall be, ex-officio, the eleventh member, and shall call the first meeting of the committee, at which meeting the committee shall perfect its organization and elect its chair. To this number shall be added two voting student delegates selected annually by the Associated Students government in whatever manner it determines, who shall be invited to attend all regular meetings of the committee. In the event that an elected member shall vacate a position for any reason, the committee shall elect a successor to fill the unexpired term.

~~Section 3.~~ C. The Committee on Faculty Membership shall be composed of the Secretary of the Faculty, who shall serve as chair, and three members of the General Faculty appointed by the Chair of the Faculty after consultation with the Faculty Senate Executive Committee from among candidates nominated by the Committee on Committees for two-year staggered terms.

~~Section 4.~~ D. The Committee on Committees shall be composed of six members of the General Faculty elected by the General Faculty for three-year staggered terms. No member shall serve consecutive terms. The committee shall elect its chair from those of its members who have served one year or more on the committee.

~~Section 5.~~ E. The Committee on Budget and Strategic Planning shall be composed of nine members, six of whom will be elected from and by the General Faculty in classes of two for staggered three-year terms. Each year the Faculty Senate will name two of its members, so chosen as to assure breadth of representation, who will serve, together with the ASUA President or his/her designee, to complete the membership. The committee will elect its chair at the end of each year for the following year, from among the four elected members of the General Faculty serving in their second or third year.

~~Section 6.~~ F. The Committee on Ethics and Commitment shall be composed of twelve members of the General Faculty elected by the Faculty Senate to serve staggered three-year terms, from nominations by the Committee on Committees. The committee may, in consideration of individual cases or issues, expand itself by no more than three additional General Faculty members having expertise in the subject matter of the case(s) being investigated.

~~Section 7.~~ G. The Committee on Facilities Planning shall be composed of six members of the General Faculty elected by the Faculty Senate to serve staggered three-year terms, from nominations by the Committee on Committees. The committee shall elect its chair from those of its members who have served more than one year on the committee. No more than two members shall be from one College Faculty, and no member shall serve consecutive terms.

~~Section 8.~~ H. The Committee on Conciliation shall be composed of six members who are tenured or continuing members of the General Faculty other than deans of any rank, elected by the Faculty Senate by secret ballot upon nomination by the Committee on Committees, which shall furnish twice as many names, with vitae, as persons to be elected. Not more than one member of any College Faculty shall be on the committee at any one time. The term of membership shall be two years. Three persons shall be elected each year. The chair of the committee shall be elected by the committee from among those in at least their second year on the committee. Members may be re-elected to this committee. At the request of the President of the University or of a College Faculty or of any member of the General Faculty who has a grievance and has failed to resolve the matter through discussing the same with the appropriate department head or dean, the committee shall act expeditiously. In the event that the committee is of the opinion that the case load is so great that undue delay will be experienced, the committee may direct that temporary members be selected by the chair from a pool of names provided by the Committee on Committees, which shall contain not less than twice the number of names as there are temporary members to be selected. The Committee on Conciliation shall conduct its business in meetings rather than hearings, and participation by legal counsel will generally be discouraged.

~~Section 9.~~ I. The Committee on Academic Freedom and Tenure shall be composed of twelve tenured or continuing members of the General Faculty other than deans of any rank, four of whom shall be elected each year by the General Faculty for a term of three years. The slate of candidates presented to the General Faculty shall be selected in the following manner:

REPLACEMENT TEXT

- a-1. The Committee on Committees ~~shall provide~~ **will prepare** a list of names containing not less fewer than ~~three~~ **two** times the number to be elected. ~~giving due consideration to representation from the various colleges.~~ **After consultation with the Chair of the Faculty and the President, the committee will reduce the list to a slate of twice the number to be elected, giving due consideration to diversity.** For each person listed, a brief description of relevant academic experience, qualifications and background will be provided. This information will also appear on the ballot submitted to the General Faculty along with the names and colleges of continuing members. **If the outcome of an election cannot be determined because of a tie vote, a runoff election shall take place.**
- b2. ~~From the list described in (a) above, the Chair of the Faculty and the President of the University shall select a slate of not less than twice the number to be elected. If the Chair of the Faculty and the President cannot agree upon a slate, the President and the Chair shall each select one person alternately, with the President making the first selection, until a slate of twice the number to be elected has been named.~~ The Committee on Academic Freedom and Tenure shall elect its chair from among those of its regular members who have served at least one year. In the event that the committee is of the opinion that the case load is so great that undue delay will be experienced in the hearing and disposition of all cases before it, the committee may direct that temporary members be installed to hear specific cases. Temporary members shall be selected by the presiding officer of the committee by whatever means he or she deems appropriate from a pool of names provided by the Committee on Committees. Such a pool shall contain not less than twice the number of names as there are temporary members to be selected. The Committee on Academic Freedom and Tenure shall select one of its regular members to serve as panel presiding officer in each case. In all cases the tenure of temporary members of the committee shall be limited to the hearing and disposition of the specific case which occasioned their selection.
- ~~3. If an elected member of the Committee on Academic Freedom and Tenure resigns or becomes ineligible for membership, this member will be replaced for the remainder of the term of the departing member with the candidate who received the next highest number of votes in the same election, with ties broken by the Chair of the Faculty. If there is no eligible candidate, the Chair of the Faculty will fill the vacancy by appointing a member of the General Faculty who is otherwise eligible for membership on the committee.~~

All requests for action on the part of the Committee on Academic Freedom and Tenure shall be made in writing, and such requests shall be made only after it has become apparent that the complainant has been unable to obtain satisfactory solutions or adjustments through the customary administrative channels and the Committee on Conciliation.

Procedures

- a.4. ~~In all cases, except those involving recommended dismissal or suspension of a member of the General Faculty, the complainant shall submit in writing to the committee, before any hearing is held on the complaint, 1) an accurate and complete statement of the charges and the essential facts out of which they have arisen; and 2) a list of witnesses whom the committee should question. After the chair of the committee has notified the President of the complaint, the complainant shall provide copies of such materials to the parties~~

~~complained against. The parties complained against may submit to the committee similar written materials, providing copies to the complainant.~~

- ~~b.5. In its investigation of a complaint, other than one involving proposed dismissal or suspension of a member of the General Faculty or if there has been a claim of discrimination or other unconstitutional action, the committee may proceed informally, receiving testimony and other evidence from the parties and their witnesses in such a manner as the committee may deem appropriate. In such informal investigation, a verbatim record of the proceedings shall not be required, and the various hearings shall be closed, subject to applicable law, unless one of the parties requests that a particular hearing be open to the university community.~~
- ~~e.6. Any party may designate an observer or a legal advisor, or both, who need not be members of the University community and who shall be privileged to be present at the hearing held on the complaint.~~
- ~~d.7. Any member of the General Faculty requested by the committee to appear as a witness in its investigation of a complaint shall consider it an obligation as a General Faculty member to appear, give testimony, and submit to cross examination. The chair of the panel of the Committee on Academic Freedom and Tenure hearing a case regarding dismissal or suspension without pay shall have the authority to issue subpoenas for the attendance of witnesses and for the production of books, records, documents, and other evidence.~~
- ~~e.8. The committee shall select from among its membership three member panels to conduct informal hearings and five member panels to conduct the more formal hearings associated with the cases where a General Faculty member has been recommended for dismissal or suspension or where a claim of discriminatory or other unconstitutional action has been made.~~
- ~~f.9. A member of the General Faculty alleging a grievance that involves discrimination, violation of constitutional rights (including due process and academic freedom), or improper administrative procedures, on the part of the University in the case of performance review, promotion, tenure, sabbatical leave, leave of absence, or non-retention of non-tenured or continuing-eligible members of the General Faculty, shall have the right to a more formal hearing before the committee. A hearing on such a case shall follow the procedures described here, and in the Arizona Board of Regents (ABOR) Policy Manual, Section 6-201, Conditions of Faculty Service, or Section 6-301, Conditions of Professional Service, such procedures applying to both parties as appropriate.~~
 - ~~i.a. The burden of proof shall be on the complainant.~~
 - ~~ii.b. Immediately upon receipt by the committee of the written charges from the General Faculty member, a copy of the charges will be sent to the President.~~
 - ~~iii.c. The five member impartial hearing panel shall hold a hearing on the matter within a period of 30 to 45 days after receiving the written charges. The hearing may be delayed or advanced with the consent of the panel and the complainant.~~
 - ~~iv.d. Each party shall have the right to present witnesses and evidence and to cross-examine witnesses.~~

- ~~v.e. — Each party shall have the right to be accompanied by counsel or other advisor.~~
- ~~vi.f. — A mechanical or stenographic record of the hearing shall be made, a transcript of which may be obtained by any party at that party's own cost.~~
- ~~vii.g. — Each party shall have a right to a copy of a written recommendation made by the panel.~~
- ~~viii.h. — The hearing may be closed upon the request of any party.~~
- ~~ix. i. — Each party shall have the right to obtain access to all relevant, non-privileged documents relating to the allegations which are subject to the other party's control and which do not violate the privacy rights of non-parties; all disagreements relating to the disclosure of documents shall be decided by the chair of the hearing committee.~~
- ~~g.10. — A tenured or continuing member of the General Faculty who is recommended for dismissal or suspension, or a non-tenured or continuing eligible member of the General Faculty who is recommended for suspension or dismissal before the end of a current contract period, has the right to the more formal hearing procedures described in the ABOR Policy Manual, Section 6-201, Conditions of Faculty Service, or in Section 6-301, Conditions of Professional Service, in which the General Faculty member and the University are accorded certain rights, as indicated.~~
 - ~~i.a. — Whenever a member of the General Faculty is recommended for suspension without pay or for dismissal, the President of the University shall refer such recommendation to the Committee on Conciliation. This committee shall attempt to arrive at a mutually agreed upon solution. If conciliation fails, the President shall provide the General Faculty member with a written notice of dismissal or suspension which shall: (1) refer to the particular statutes, rules or policies, if any, involved; and (2) contain a statement of the reasons for the recommendation in sufficient detail to enable the General Faculty member to prepare a defense. As an alternative to meeting with the Committee on Conciliation, a member of the General Faculty may agree to participate in a mediation process to be established by the University.~~
 - ~~ii.b. — The burden of proof for the existence of just cause for the General Faculty member's dismissal or suspension shall be on the appointing authorities.~~
 - ~~iii.c. — The Committee on Academic Freedom and Tenure will immediately upon receipt of its copy of the letter of notification begin the procedure of setting up its formal hearing for the case. The hearing on the charge is to take place as soon as possible, but no sooner than thirty (30) calendar days after verified receipt by the General Faculty member of the letter of notification. Service of written notice of the time and place of the hearing shall be given at least twenty (20) calendar days prior to the hearing.~~
 - ~~iv.d. — The General Faculty member shall provide the committee and the President with a statement of his/her position or rebuttal to the charges at least ten (10) days prior to the hearing date. Failure to provide this statement shall immediately terminate the procedure.~~

- v.e. ~~— The General Faculty member has the right to be advised, at least ten (10) days in advance of the hearing, of the names and addresses of witnesses, and the right to have access to documentary evidence upon which the case for dismissal or suspension is grounded. Adjournments of the hearing shall be granted to enable either party to investigate evidence as to which a persuasive claim of surprise is made. In accordance with the state's open meeting law, the hearing and the committee deliberations shall be conducted in executive session closed to the public, except that the faculty member may demand that all proceedings be held in a public meeting (A.R.S. 38-431 (A) (1)).~~
- vi.f. ~~— The General Faculty member has the right to be heard in his or her own defense, and to offer testimony of witnesses and other evidence.~~
- vii.g. ~~— The General Faculty member has the right to legal counsel or other representative who shall have standing to speak during the hearing, except for those hearings concerned with suspension without pay, dismissal, and/or unconstitutional discrimination mandated by the ABOR Policy Manual, Section 6-201.~~
- viii.h. ~~— The General Faculty member has the right to confront and cross-examine adverse witnesses.~~
- ix.i. ~~— The General Faculty member has a right of access to a record of the hearing at no cost. Transcription, either electronic or written, shall be at the party's own cost.~~
- x.j. ~~— At the conclusion of the testimony the committee may permit each party to make an oral or written summation.~~
- xi.k. ~~— The findings of fact and the decision will be based solely on the hearing record. A written copy of the committee's recommendations shall be given to the General Faculty member.~~
- h.11. ~~— Whether formal or informal, a hearing by the committee or one of its panels shall be conducted according to accepted rules of an administrative fact finding commission.* The panel presiding officer, assisted by the other members, shall conduct the hearing and shall be responsible for a full and complete hearing of the issues. The admissibility of evidence shall not be restricted by the rules applicable in judicial hearings. However, receipt of evidence should only be permitted if it would, in the judgment of the panel, be the type that would be considered by prudent persons in the management of their own affairs.~~
- i.12. ~~— If the committee's hearing on a complaint submitted by a non-tenured/continuing-eligible member of the General Faculty is not concluded before his or her appointment expires, the complainant may elect that the proceedings on the complaint be carried to a conclusion. Unless such a written election is served upon the hearing panel, the proceedings shall be discontinued upon the expiration of the appointment.~~
- j.13. ~~— In a case involving proposed non-retention of a member of the General Faculty wherein he or she claims a tenured/continuing status which is not recognized by the University, the committee shall first make an informal preliminary investigation and report its conclusions regarding the tenure/continuing issue. If the committee concludes that the claim of~~

tenured/continuing status is justified, the General Faculty member has the right to the more formal hearing process of Paragraph (g) above.

- ~~k.14. In cases in which a full hearing has not been held prior to the imperative suspension of a General Faculty member, the full hearing procedure will be promptly undertaken with the first step being a review of the matter by the Committee on Conciliation.~~

~~(See pertinent sections of Chapters 3 and/or 4 of the University Handbook for Appointed Personnel.) One purpose of the review, which is to take place within one week of the committee's receipt of a copy of the notice of suspension, shall be to ascertain promptly and to report to the President whether the committee believes it is proper to continue the suspension until a full hearing before the Committee on Academic Freedom and Tenure can be held. The appointing authorities shall have the burden of proof in any such review.~~

- ~~l.15. In such instances as may require an extension of the time periods herein stated, and/or in instances wherein no hearing is held, written agreement, specifying reasons for the exception and alternatives to be followed, shall be signed by and copies provided to all parties to the action.~~

- ~~m.16. The President shall as soon as practicable after receipt of the hearing material make a determination and forward copies of this determination to the General Faculty member concerned and to the committee. In cases concerning General Faculty members covered under the Conditions of Faculty Service, final decisions on dismissal are made by the Board of Regents, acting on the President's recommendation. In cases concerning academic professionals covered under the Conditions of Professional Service, final decisions on dismissal are made by the President.~~

REPLACEMENT TEXT

Grievance Policies and Procedures for Faculty

Purpose: To provide for hearing procedures for members of the General Faculty

Source: *Arizona Board of Regents Policy Manual - 6-201*
Arizona Board of Regents Policy Manual - 6-301
University Handbook for Appointed Personnel (UHAP)

4. Grievance Principles

a. The Board of Regents and the President, administrators and faculty of The University of Arizona (UA) recognize the importance of providing a prompt and efficient procedure for fair and equitable resolution of grievances without fear of prejudice or retaliation for initiating a grievance or participating in the grievance process.

Note: "Grievant" and "respondent" may refer to one or more individuals.

b. Each individual's attempt to rectify a perceived wrong is considered consistent with UA's role as an upholder of individual rights.

- c. The existence of a grievance process in no way diminishes the responsibility of faculty and administrators for the exercise of sound academic judgment.
- d. All grievants shall have clearly defined avenues of appeal and redress that may include mediation and/or a hearing before a faculty committee that reports to the President. The President decides the matter and his or her decision is final. The grievant's rights to further judicial appeal shall not be abrogated by this policy.
- e. Faculty grievance procedures apply to general faculty as defined in the Constitution, Article II.
- f. The preferred option is to resolve grievances internally at the level closest to the grievant. By using internal conciliation and hearing procedures first, the grievant should be able to obtain acceptable results without escalation to a formal charge with an outside agency.
- g. At each level of decision-making, the grievant shall be informed of the informal and formal options available for redress and appeal if the grievance is unresolved.
- h. In cases involving suspension without pay or dismissal, conciliation is mandatory before proceeding to a more formal hearing. In other cases, grievant may choose either a conciliation route that may then be followed by a grievance route or may directly choose a grievance hearing.
- i. The grievant may choose to have legal counsel present at his or her expense in all hearings. If grievant chooses not to have counsel present at a hearing, the respondent shall not have counsel at the hearing either. Grievant must notify the respondent within one week of the scheduled hearing whether or not he or she intends to have counsel present at the hearing. Any party may obtain legal advice and assistance in preparation for a hearing, even if a legal advisor will not be present at the hearing itself.
- j. Each grievant has the right to a fair, full, and reasonably speedy investigation and judgment by members of the appropriate committee.
- k. Two or more faculty members experiencing the same grievance have the right to seek redress jointly or individually, unless the basis for the grievance is release solely for reorganization based on either budgetary or financial emergency or programmatic changes, in which case, the grievants shall all seek redress jointly.
- l. Written records of grievance-related matters at each level are to be kept and made available to all parties in the case, except privileged communications or documents that are confidential pursuant to state or federal laws or regulations.
- m. All parties to a grievance are entitled to frequent notification of the status of their case, at least at the conclusion of each stage of the process.
- n. Grievances involving faculty members who teach off the main UA campus shall be handled by grievance procedures prescribed herein, unless overridden by local administrative policies.

o. Grievants and witnesses are assured freedom from reprisals related to their testimony. A separate whistle blower policy describes whistle blower protections, and when those protections are applicable.

p. Allegations of sexual harassment may be filed with the University Equal Opportunity/Affirmative Action Office (EO/AAO) following the procedures developed by that office. A separate sexual harassment policy describes the policy and procedures.

q. Allegations of discrimination based on gender, sexual orientation, age, race, national origin, religion, disability and/or veteran status may be filed with EO/AAO. Separate discrimination policies describe the policies and procedures.

r. Generally, if a conflict cannot be settled through the Ombuds or Conciliation process, a member of the faculty is best served by filing his or her grievance with the single and most appropriate committee or office. The Grievance Clearinghouse Committee shall advise which committee (Conciliation, CAFT, or UCEC) or process (EO/AAO) will handle the case. However, if a faculty member alleges that an adverse decision concerning his or her promotion, tenure or continuing status, non-renewal, or release from employment based on a reorganization for budgetary or program changes, was based on unlawful discrimination, the faculty member may proceed to a CAFT hearing following an investigation by the EO/AAO.

s. No faculty member should be fined, suspended, or dismissed unless there is clear and convincing evidence as to any disputed factual issues.

t. No faculty member or administrator should be involved in the determination of a dispute in which he or she is a party because of direct involvement in the contested matter.

u. No faculty member shall forfeit the right to grieve a matter unless he or she is aware that s/he has been harmed, has a right to grieve the matter, and is specifically apprised of any time limits regarding contesting the matter.

5. Grievance Resolution Procedures

a. Introduction

Informal problem resolution may be requested, or formal grievances may be filed if the grievant believes:

i. There has been a violation, a misinterpretation, or an arbitrary or discriminatory application of university policy, regulation, or procedure which, applied personally to that faculty member, infringes upon his or her privileges, responsibilities, or terms and conditions of employment; or

ii. There have been salary, teaching assignment, equipment access or other inequities; or

iii. He or she has been discriminated against on the basis of gender, sexual orientation, race, religion, national origin, age, disability and/or veteran status; or

- iv. There has been an infringement on his or her academic freedom; or
- v. There has been improper suspension or dismissal.

b. Grievance resolution procedures differentiate among ombudsperson and conciliation processes and grievance hearings. An ombudsperson provides impartial, informal, confidential problem solving and conflict resolution. Conciliation is a more formal process involving the faculty and others (e.g., department chair, dean, other faculty members) who are conferred with individually or assembled by a neutral conciliator. A grievance hearing, the most formal method of resolution, is requested by a faculty member, and conducted by the Committee on Academic Freedom and Tenure. A fourth process involves the filing of a harassment or discrimination complaint with the Equal Opportunity/Affirmative Action Office.

c. In most cases, faculty may choose an informal route (ombuds or conciliation), which may be followed (if necessary) by the grievance hearing route or the grievance hearing route alone. In cases involving recommendations for suspension without pay or dismissal from employment, ABOR rules require conciliation be attempted before a grievance hearing can be held. Grievances alleging discrimination or sexual harassment may be filed with either the Grievance Clearinghouse Committee (see section 7, a, i, below for composition of Grievance Clearinghouse Committee) or EO/AA.

d. The recommended starting point for resolving grievances is at the head or dean level, whichever is applicable. If, however, the grievant does not wish to follow this route, or this route has not provided acceptable resolution, a grievant has the option of using an ombudsperson, conciliation or a more formal grievance hearing process.

6. Informal Resolution Procedures

a. Introduction

Informal resolution procedures are provided for the faculty member who desires informal assistance in the resolution of a complaint. An ombudsperson, Committee on Conciliation member or professional mediator will mediate, conciliate, and coordinate communication among the grievant, respondent, and others related to the complaint. The purpose of this process is to air differences between the parties and to resolve the complaint to the satisfaction of both parties without resorting to formal hearings. Informal resolution is strongly recommended.

The names of university ombudspersons and members of the faculty Committee on Conciliation are available from the Faculty Center.

b. Ombudsperson Committee

- i. The ombudsperson is an informal process used to prevent disputes where possible, or facilitate problem resolution.
- ii. The ombudsperson is a designated neutral who helps manage conflict or perceived conflict by listening and generating options to help the faculty

member resolve his or her problem. The ombudsperson may work with one, both, or all parties to reach a mutually satisfactory agreement and prevent disputes from escalating.

iii. The purpose of this informal process is to provide confidential, informal assistance in resolving disputes or questions in a neutral setting before resorting to formal grievance processes, preserving or improving working relationships and creating a better working environment.

iv. The ombudsperson will not take any action nor disclose any information without the permission of the person seeking assistance, unless required by law to do so.

c. Conciliation Process

i. The Committee on Conciliation has jurisdiction to make inquiry and to meet and discuss any problem involving any member of the General Faculty in his or her relationship with the University. The committee may consult and advise but shall not conduct hearings. It is the duty of the committee, after careful investigation, to offer counsel to the person or persons involved. Following the completion of the conciliation process, the committee informs the President of the University of the results. If the conciliation has been unsuccessful, both parties will be notified accordingly in writing with the member being advised that the grievance at issue may be presented to the Committee on Academic Freedom and Tenure for further investigation and hearing.

ii. The faculty member seeking conciliation shall file a complaint with the Committee on Conciliation within 30 days of the occurrence of the actions which form the basis of the complaint.

iii. The grievant shall not be represented by an attorney during conciliation. He or she may have an adviser from the university community who can attend meetings and review written documentation. Access shall not be given to information deemed confidential or privileged under federal or state laws or if access would constitute an invasion of privacy. If the conciliator denies access, all parties will be given a written explanation. If the grievant disagrees with the conciliator's determination, the grievant may terminate mediation and file the complaint within 15 days to the Grievance Clearinghouse Committee.

iv. The conciliator shall have 30 days after receiving written statements from the grievant and respondent to try to resolve the conflict.

v. Conciliation process results shall be summarized in a report prepared by the conciliator and sent to the parties and to the President.

vi. If a mutually satisfactory resolution results from the conciliation, the process ends. If the parties cannot resolve the differences, the grievant may, if he or she chooses, seek a grievance hearing with a request to the Grievance Clearinghouse Committee. The request shall be filed within thirty (30) days of receipt of the conciliator's report.

7. Grievance Hearing Procedures

a. Whether or not a grievant has sought conciliation, he or she may request a hearing by a grievance hearing committee through the Grievance Clearinghouse Committee. If the grievance involves unlawful discrimination, the grievant may file a complaint directly with the Equal Opportunity/Affirmative Action Office (EO/AAO) without first going through the Grievance Clearinghouse Committee.

i. The Grievance Clearinghouse Committee consists of the chairs of the Committee on Academic Freedom and Tenure (CAFT), the Committee on Conciliation, the Committee on Ethics and Commitment, and a representative of the Equal Opportunity/Affirmative Action Office.

ii. The chair of CAFT will function as the ex-officio chair of the Grievance Clearinghouse Committee. Requests for hearings by a grievance committee should be filed with the chair of CAFT. Faculty may locate the chair of CAFT by visiting the CAFT web page (<http://w3fp.arizona.edu/caft/>) or by phoning the Faculty Center (621- 1342).

iii. If the EO/AAO representative determines that the grievant's case contains an allegation of unlawful discrimination, the grievant's case shall be referred to the EO/AAO. If the EO/AAO representative determines that the grievant's case does not contain an allegation of unlawful discrimination, the chairs of CAFT, Conciliation, and UCEC will advise which committee shall handle the grievance. Upon this advice, the grievant will choose a single committee (as stated in grievance principle r.)

b. No fewer than three faculty members shall constitute a hearing panel. Members shall not participate in hearings when there is a conflict of interest.

c. The grievance procedure will involve the following steps:

i. Within 30 days of receipt of the conciliator's report or within 30 days of the occurrence of the actions which formed the basis for the grievance, the grievant shall make a written request for a formal hearing to the chair of the Grievance Clearinghouse Committee. Written requests should be marked confidential and sent to the Chair of Grievance Clearinghouse Committee. If any Board of Regents or University policy provides shorter time limits, the shorter limits will apply.

The request must be filed by the grievant by hand delivery or by certified mail, return receipt requested, with the chair of the Grievance Clearinghouse Committee at his or her university office address and shall state: grievant's name, address, telephone number, a statement of the complaint, remedies sought, and the name and address of grievant's attorney, or that grievant is proceeding without an attorney.

ii. The Grievance Clearinghouse Committee shall advise which committee (Conciliation, CAFT, or UCEC) or process (EO/AAO) will handle the case based on the following jurisdictional guidelines:

(1) Alleged discrimination.

If discrimination in employment, program, or activity based on race; color; religion; sex, including sexual harassment; national origin; age; disability; or veteran status is the essence of the grievance, the matter will be referred to the EO/AAO for consideration in accordance with the procedures established by that office.

(2) Other faculty grievances, including alleged infringement on academic freedom and tenure, will be handled by the Committee on Academic Freedom and Tenure (CAFT).

(a) CAFT shall hear any faculty allegation that a decision affecting his or her employment relation with the university was not determined in substantial compliance with regular university procedures. This includes dismissal, non-renewal of contracts, promotions, sabbatical leaves, and leaves. When, however, the matter concerns the basis or reasons for administrative decisions on promotion or leaves, the committee shall not have jurisdiction.

(b) If the allegation asserts that a decision on non-retention or denial of tenure was not determined in accordance with regular university procedures or was based on discriminatory or other unconstitutional grounds, the committee may hear the case. In performing its function of assessing the procedural regularity of the tenure and promotion process, CAFT has an important fact-finding role, similar to that of a board of inquiry. To the extent possible, this role should be carried out in a non-adversarial, collegial way.

(c) CAFT shall hear disputes on the amount of salary due a non-tenured faculty member who has been suspended or dismissed before the expiration of the employment period.

(d) CAFT shall hear any other faculty grievances, such as alleged unfair treatment because no policies or procedures exist or existing policies or procedures have been misinterpreted, misapplied, or violated by a university administrator.

iii. The chair of the Grievance Clearinghouse Committee shall forward the request for a hearing within seven days after it is filed to respondent, with instructions to respond within 15 days. The response shall contain the name, address, telephone number of respondent, a statement of respondent's position on the issue, and the name and address of the respondent's attorney if grievant elects to be represented by an attorney. Respondent is not obligated to have an attorney.

iv. Within 15 days of the original request, the grievant and respondent will receive written notification from the chair of the Grievance Clearinghouse Committee as to which committee will hear the case and a statement of procedures of that committee.

v. The chair of the designated hearing committee will set a hearing date in conjunction with all parties involved in the case. The hearing should begin within 60 days of the date of the original request. The sixty-day period includes only the time when the university is in session. Semester breaks and summer recess are not included. The parties shall receive notice of the hearing date at least 20 days before the hearing date.

vi. A grievance shall not proceed if the grievant, after due notice, fails to be present or fails to obtain a continuance. A grievant may withdraw his or her grievance at any stage in the grievance procedure by writing the chair of the committee designated to hear the grievance.

vii. The Grievance Clearinghouse Committee will advise the grievant of relevant statutes of limitation that would affect his or her ability to file for a hearing or investigation outside the university. Specifically, in the case of discrimination, the grievant must file a complaint with the Arizona Civil Rights Division, U.S. Dept. of Education Office of Civil Rights, or the U.S. Dept. of Labor within the deadlines specified by those agencies.

viii. If a grievant commences a grievance with an outside agency based on the same or other grounds, either the conciliator or the chair of the hearing committee, depending on the progress of the internal grievance, will continue the internal grievance, unless the grievant desires to postpone the hearing process or withdraw the internal grievance.

Grievant shall be advised by the chair of the hearing committee to consider filing charges with an outside agency if the deadline to file may pass pending the outcome of the internal process.

ix. No later than 15 days before the hearing date, the grievant and respondent will submit complete written documentation about the complaint and a list of witnesses to the chair of the hearing committee.

x. The chair of the hearing committee shall send a copy of the written documentation and witness lists submitted by the grievant and the respondent to the committee members within three days after receipt. The grievant's witness list and documentation will be forwarded to respondent and the respondent's witness list and documentation will be forwarded to grievant by the chair within three days after receipt.

xi. The chair of the committee may call witnesses upon request of either party or on the chair's initiative. The chair may also require the production of books, records, and other evidence. Request shall be made either by personal delivery or by certified mail.

xii. Hearings by grievance committees shall be conducted according to the

following rules:

(1) Hearings shall be recorded on tape. In addition, ABOR requires cases involving suspension without pay or dismissal to be recorded using a court reporter. Deliberations are not part of the hearing.

(2) Unless overriding reasons under law or ABOR policy are given to grievant, respondent, and other appropriate parties, all parties shall have access to all information that is presented to the hearing body at no expense to them.

(3) While a grievance is being processed, grievant and respondent should be informed about the status of the grievance.

(4) Grievant may have legal counsel in any hearing. If grievant elects to proceed without counsel present at a hearing, respondent shall also proceed without counsel present. Either party may have the advice of counsel prior to the hearing. If the grievant has counsel, generally, an attorney in the University Office of General Counsel will advise the respondent.

(5) Advice to the grievance committee

(a) If neither party is advised or represented by counsel, and the University Attorney has not been involved in the case on behalf of either party, then a University Attorney may provide procedural advice to the grievance committee upon request.

(b) An outside counsel may be obtained to provide legal advice to the committee if the University Attorney is precluded from providing advice to the committee.

(c) Legal advice is limited to procedural and evidentiary matters, not substantive issues related to the case.

(6) Any member of the General Faculty requested by the committee to appear as a witness in its investigation of a complaint shall consider it an obligation as a General Faculty member to appear, give testimony, and submit to cross-examination. The chair of the panel of the Committee on Academic Freedom and Tenure hearing a case regarding dismissal or suspension without pay shall have the authority to issue subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence.

(7) The grievant and respondent shall hear all testimony.

(8) Upon request of either party and for good cause shown, the chair may continue the proceedings to another time.

(9) Either party may demand that witnesses be excluded except while testifying. Generally, the committee will allow all witnesses to testify

and documents to be presented which are related to the complaint or the response.

(10) Each party may present an opening statement of his or her position. Generally, the grievant will then present all of his or her witnesses and documents. The committee members may question the witnesses and ask questions about documents presented. The respondent may question the grievant and witnesses. After the grievant has presented his or her case, the respondent shall have an opportunity to present witnesses and documents, and the committee members may question the witnesses and ask questions about documents presented. The grievant may question the respondent and witnesses. The members of the committee may question the parties throughout the hearing.

(11) At the completion of the hearing, the chair will notify the parties that within 30 days the committee will forward a report of its findings, conclusions, and recommendations to the President, who will make the final decision.

(12) Within 45 days of receipt of the committee report, the President shall decide the matter and forward a written statement to the grievant, the respondent, and the members of the hearing committee. If the President cannot issue a decision within the 45-day period, the President will notify the parties within the 45-day period of a delay in the issuing of the decision, the reasons for the delay, and the date on which the decision can be expected.

(13) An employee who is dissatisfied with the President's decision may request reconsideration of the decision pursuant to Arizona Revised Statutes, Sec. 41- 1062 by filing a written request with the President no later than 15 days following receipt of the President's written decision. The request shall be based on one or more of the following grounds:

(a) irregularities in the proceedings, including any abuse of discretion or misconduct by the CAFT panel or hearing officer which deprived the employee of a fair and impartial hearing;

(b) newly discovered material evidence which with reasonable diligence could not have been presented at the hearing; or

(c) the decision is not justified by the evidence or is contrary to law.

Following receipt of the request for reconsideration, the President shall conduct whatever review he/she deems necessary to resolve the issues that have been raised. The President will provide a written response to the request to all parties. When the employee does not request reconsideration, the President's decision following the hearing

becomes final 15 days from the employee's receipt of the decision and concludes the grievance process. When the employee requests reconsideration, the President's decision following reconsideration is final and concludes the grievance process.

The President's decision following the hearing shall advise the employee that he/she has 35 days from the date on which the decision becomes final to seek review of the decision in the superior court pursuant to the provisions of the Administrative Review Act, Arizona Revised Statutes, Sec 12-901, et seq.

(14) The hearing report shall be provided to the parties by the President on request.

(15) When CAFT determines that there has been a material failure by an academic unit to adhere to procedures governing the tenure and promotion process, it should advise the senior vice president and provost through its report to the President, so that the following steps can be taken.

(a) The senior vice president and provost will consult with the faculty and/or head of that unit to ensure that such a failure does not happen again.

(b) If CAFT determines that such a failure was a deciding factor in a recommendation that the candidate be denied tenure or promotion, it should so advise the senior vice president and provost.

(c) The advice is not the functional equivalent of a recommendation to grant tenure or promotion. Tenure and promotion can only be granted when there has been an appropriate showing that the candidate has met the standards of the academic unit in which he or she is to be tenured or promoted. A determination by the senior vice president and provost, based on the recommendation of CAFT or otherwise that a candidate's review has been procedurally flawed is not a showing that the standards of the academic unit have been met.

(d) The senior vice president and provost will take steps to determine whether the standards have been met. He or she may return the application to the academic unit from which it arose, with instructions to reconsider the application in the following academic year in accordance with proper procedures.

(e) If, based on the advice of CAFT or otherwise, the senior vice president and provost determines that it is not likely that the candidate can receive fair reconsideration from the academic unit to which the application would ordinarily be

returned, the senior vice president and provost, in consultation with the candidate and the chair of CAFT, will devise an ad hoc procedure to determine if the candidate has met the standards of the academic unit. Such a procedure, for example, might involve submitting the candidate's tenure (or promotion) application and the unit's standards to a committee consisting of faculty in the relevant discipline from another university.

(f) When the senior vice president and provost determines that an application for tenure must be reconsidered, above, the candidate's contract should be adjusted to ensure that he or she will have an additional year under the terminal contract in which to find a new position (if the reconsideration results in a denial of tenure).

(xiii) Grieving Dismissal or Suspension on the Grounds of Unfitness for Duty

(1) When reason arises to question the physical or mental fitness of a faculty member who has tenure or whose term of appointment has not expired, the appropriate administrative officers, as designated by the President on a case-by-case basis, should ordinarily discuss the matter with the faculty member in a personal conference. Both parties will assess the situation in terms of applicable policies on sick leave, family medical leave, long or short term disability, etc., looking for solutions to the problem through appropriate benefits policies. ABOR 6-201 (Conditions of Faculty Service) and ABOR 6-301 (Conditions of Professional Service) provide guidance on cases involving the inability to perform duties based on physical or mental incapacity. ABOR 6-201 (J) (3) addresses situations where a faculty member's continued presence on campus is likely to be a substantial interference with the orderly functioning of the University or one of its units.

(2) If the parties cannot agree on the application of some form of leave, or if no form of leave is appropriate in a particular situation, and the administrative officer designated by the President therefore recommends dismissal or suspension without pay, the faculty member may grieve this recommendation in accordance with procedures outlined in section 7 of this document.

Cross-References

For the composition of grievance committees, see "Academic Constitution and Bylaws."

For the Board of Regents' official conditions policy, see "Conditions of Faculty Service" and "Conditions of Professional Service."

ARTICLE V
The Faculty Senate

~~Section 1.~~ **A. Functions.** Among the functions to be exercised by the Faculty Senate are:

- ~~a.~~1. To recommend curricula and degrees for approval. While matters pertaining to courses, major and minor requirements, the kinds of degrees and requirements for each will originate in the various colleges, the final formulation which is to be recommended to the Board of Regents shall be determined by the Faculty Senate.
- ~~b.~~2. To formulate and/or recommend for approval policies governing official university catalogs.
- ~~c.~~3. To establish committees to assist in carrying out functions assigned to the Faculty Senate by the Constitution and Bylaws of the General Faculty.
- ~~d.~~4. To maintain communication and liaison with the President of the University, administrators, faculty, staff, and students.
- ~~e.~~5. To recommend policy concerning academic conduct of students.
- ~~f.~~6. To recommend policies concerning promotion, tenure, continuing status, sabbatical leave, and other leaves of absence.
- ~~g.~~7. To act upon nominations for recipients of honorary degrees, which may be proposed by one or more of the College Faculties.
- ~~h.~~8. To make recommendations relative to the general University policies and procedures.
- ~~i.~~9. To discharge responsibilities assigned by the Constitution and Bylaws of the General Faculty.
- ~~j.~~10. To act upon matters brought for consideration in accordance with the Constitution and Bylaws of the General Faculty and existing University policy.
- ~~k.~~11. To execute such other functions as are consistent with the Constitution and Bylaws of the General Faculty.

~~Section 2.~~ **B. Membership.** The sixty-one voting members of the Faculty Senate shall be comprised of the following:

- ~~a.~~1. Ex-officio members: The President of the University, the Provost, the Chair of the Faculty, the Vice Chair of the Faculty, and the Secretary of the Faculty shall be voting members of the Faculty Senate.
- ~~b.~~2. Elected members: Elected members of the Faculty Senate will hold office for two years, beginning on May 1 of the year in which they are elected, in accordance with the following:
 - ~~i.~~a. One member shall be elected by and from the Vice Presidents, and one member shall be elected by and from the Deans, in alternate years, prior to May 1.

- ii.b. Twenty members shall be elected, prior to May 1 of the odd-numbered years, by the General Faculty. These shall be designated Senators-at-Large.
- iii.c. A minimum of one member shall be elected prior to May 1 of the even-numbered years by each College Faculty. General Faculty members not affiliated with any college shall conduct an election as if they constitute a common college. Elected members of the Faculty Senate in addition to the twenty elected by the General Faculty and the one elected by each College Faculty, including those acting as a common college, shall be apportioned among the several, but not necessarily all colleges, essentially in proportion to the number in each College Faculty. Such apportionment is to be established in accord with the published census of the General Faculty by an ad hoc committee of three Faculty Senate members, no two of whom may be from the same college, appointed by the Chair of the Faculty in the appropriate fall semester.
- iv.d. Seven students, selected annually by the Associated Students government in whatever manner it decides.

e.3. An absent member may send a substitute who shall not vote.

e.4. The Faculty Senate shall fill a Senate seat vacated for any reason using the following procedure:

Either of two situations exists when an unexpired or vacated term occurs, namely: (a) there were unelected candidates for the position in the election in which the unable-to-serve Senator was elected, or (b) there were no unelected candidates available from the most recent election in the unable-to-serve Senator's constituency.

For all vacancies occurring under situation (a), the Committee on Elections will ask the candidate receiving the next highest number of votes to become the successor. If this individual is unavailable, then the next highest vote recipient will be asked to serve, repeating until no unelected candidates are available. All such successors will serve until the return of the regularly elected Senator or until the end of the vacated term, whichever occurs first, but no less than one full semester in any case.

For vacancies occurring under situation (b), two types occur as follows:

- (1) the vacated term to be filled is longer than one semester, in which case the Committee on Elections will be asked to conduct a special election in the constituency of the vacated seat, complete with nominating petitions and written ballot voting. An individual elected in this way will serve to the end of the unexpired term of the vacated seat.
- (2) the vacated term is for one semester, in which case the Committee on Committees will be asked to provide the name of an individual from the vacated Senator's constituency who is willing to serve. An individual selected in this way will serve only until the end of the then current semester.

In all of these situations the Senate will be asked to ratify the individuals selected to fill the vacancies. All such individuals will have full voting privileges in the Senate.

~~Section 3.~~ C. Method of Voting. At meetings of the Faculty Senate voting shall be by viva voce, by a show of hands, by a rising vote, or by ballot as decided by whoever is presiding over the meeting at the time of the vote. Upon request of seven or more members of the Faculty Senate, the vote shall be taken by roll call. Such recorded vote shall be included in the minutes of the Faculty Senate which are distributed to all members of the General Faculty. It shall, however, always be in order to move to vote by ballot.

~~Section 4.~~ D. Faculty Senate Standing Committees.

- a-1. Executive Committee. The committee membership shall consist of the Chair of the Faculty, the Vice Chair of the Faculty, the Secretary of the Faculty, chairs of the Faculty Senate standing committees, Chair of the Committee of Eleven, two members of the Senate elected at the regular May meeting of the Faculty Senate in alternate years from nominees whose names were submitted to the Faculty Center in time for distribution with the agenda for that meeting, the President of the University or his/her designee, the President of ASUA or his/her designee, the President of GPSC or his/her designee, and the Parliamentarian who shall be non-voting. The Vice Chair of the Faculty shall serve as chair of the committee. The committee shall establish the agenda for each meeting of the Faculty Senate.
- b-2. Academic Personnel Policy Committee. This committee shall deal with such matters as promotion and tenure (policy and procedures; statistical report on decisions from the previous year), sabbatical and leave of absence policy, performance evaluation policy and procedures and their relationship to salaries, definition of faculty membership, governance (for example, the University Handbook for Appointed Personnel, General Faculty Constitution and Bylaws, and Conditions of Faculty Service), policies on grievance (including receiving reports from the Committee on Academic Freedom and Tenure and the Committee on Conciliation), affirmative action, and solicitations for faculty time and money.
- e-3. Instruction and Curriculum Policy Committee. This committee deals with policy matters related to curriculum and degrees, teaching effectiveness, Honors Program, and Commencement, and coordinates activities with and receives reports from such groups as the Undergraduate Council, the Graduate Council, and the Intercollegiate Writing Committee.
- d-4. Research Policy Committee. This committee deals with such matters as secrecy policy, research policy, research parks, interaction with industry, patent policy, Arizona Research Laboratory, research institutes, human and animal research, and safety.
- e-5. Student Affairs Policy Committee. This committee deals with such matters as student quality of life, financial aid, the Code of Conduct, the Code of Academic Integrity, admission and domicile classification, high school and community college relations, recruitment and retention policies, and registration.

~~Section 5.~~ E. Each Faculty Senate standing committee, except the Executive Committee, shall consist of seven General Faculty members, a majority of whom must be members of the Faculty Senate. The standing committee members shall be appointed by the Vice Chair of the Faculty, after consultation with the Faculty Senate Executive Committee, from names suggested by the Committee on Committees. Student members of standing committees shall be nominated by the Associated Students of The University of Arizona and by the Graduate and Professional Student Council. Members of standing committees shall

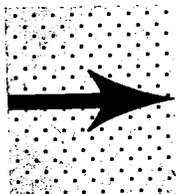
serve no more than three consecutive one-year terms, but they may be reappointed after an interim of one year.

~~Section 6.~~ F. At times, ad hoc committees may be created. If it is an ad hoc committee of the General Faculty, then the Chair of the Faculty shall appoint its members. If it is an ad hoc committee of the Faculty Senate, then the Vice Chair of the Faculty shall appoint its members. The appointment of ad hoc committee members shall be done by the Chair or Vice Chair only after consultation with the Faculty Senate Executive Committee, from names suggested by the Committee on Committees.

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determine whether the release is consistent with the objectives to be served by the reorganization.

- c. The review committee shall take into consideration the basis for the university's decision to release and shall provide the opportunity for the faculty member to respond.
 - d. The review committee may consolidate proceedings in order to expedite its reviews, but shall review each decision to release on its own merits and render its recommendations accordingly.
 - e. The review committee shall forward its written recommendation to the president no later than forty-five days following receipt of the faculty member's request for review. If the decision to release is deemed to be reasonable, the committee shall recommend that the decision to release be upheld. If the decision to release is deemed not to be reasonable, the committee shall recommend that the decision to release be reversed. This review committee shall make no recommendation as to the reorganization.
 - f. The university president shall consider the committee's recommendation and render a final decision to uphold or reverse the decision to release no later than fifteen days from the receipt of the committee's recommendation.
7. A tenured faculty member who is released shall be given a terminal year appointment unless the Board's approval of the reorganization includes a specific determination that budgetary considerations do not permit such an appointment.



L. Hearing Procedures for Faculty

1. Statement of Principles

Investigations and hearings require the judicious consideration of facts, but they should neither partake of the form of courts of law nor be constrained by the limitations imposed upon such courts. They are academic hearings the purpose of which is to safeguard

and protect not only the individual rights of the members affected but also the integrity of the university.

2. General

- a. A faculty member recommended for suspension without pay or for dismissal shall be subject to the procedures set forth in this subsection.
- b. The procedures in this subsection apply only to dismissal or suspension without pay proceedings. In particular, and without limitation, these procedures are not applicable to:
 - (1) Decisions relating to promotions, sabbatical leaves or other leaves;
 - (2) Decisions relating to renewal at the end of an appointment period of a nontenured faculty member;
 - (3) Decisions relating to release from employment due to reorganization;
 - (4) Decisions relating to evaluation of faculty under section 6-211; and
 - (5) Suspension or dismissal from a concurrently held nonfaculty position.

3. Conciliation/Mediation

- a. If a faculty member is recommended for suspension without pay or for dismissal, the faculty member may appeal the recommendation by submitting written notice of appeal to the President no later than ten (10) days following the date on which the recommendation is posted. The president of the university shall refer such appeal to a conciliation committee within seven (7) days of receiving the notice. The conciliation committee consists of one or more full-time faculty who are elected by the academic senate or faculty as a whole. This committee shall attempt to arrive at a mutually agreed upon solution.

- b. If conciliation fails or after 30 days following the date on which the appeal was referred, the president shall provide the faculty member with a written notice of dismissal or suspension. The President may extend this deadline for up to 30 days if the prospect for successful conciliation is positive. The President's written notice of dismissal or suspension shall:
 - (1) Refer to the particular statutes, rules or policies, if any, involved.
 - (2) Contain a statement of the reasons for the recommendation in sufficient detail to enable the faculty member to prepare a defense.
 - c. As an alternative to meeting with the conciliation committee, a faculty member may agree to participate in a mediation process to be established by the university. In the case of mediation, the same deadlines for referral and termination of the procedure shall pertain as in the case of conciliation.
4. Hearing
- a. The faculty member may appeal a notice of dismissal or suspension without pay by providing the president and the chair of the Committee on Academic Freedom and Tenure (CAFT) with a written detailed statement of the faculty member's position within 10 days after receipt of the notice of dismissal or suspension. Failure to provide the written statement within the ten day period shall immediately terminate the procedure.
 - b. The faculty member shall further provide a copy of the notice of dismissal or suspension and the statement of position to the Chair of the CAFT. The Chair shall then fix a time for hearing, which hearing shall commence not less than 30, nor more than 45 days, after receipt by CAFT of the notice of dismissal or suspension and the written statement of position from the faculty member. The Chair shall serve upon the parties a written notice of hearing at least 20 days prior to the hearing. The Chair may shorten or extend these time periods for good cause shown or upon consent of the

parties. The Chair shall comply with the state open meeting law by posting a notice which contains the date, time, and place of the hearing in a place designated by each university for the posting of such notices no later than 24 hours preceding the hearing.

- c. For the purpose of hearing appeals from faculty members recommended for suspension without pay or dismissal, CAFT shall include one or more community representatives or alumni. Selection of community or alumni representatives shall be in accordance with procedures to be developed by each university in consultation with elected faculty representatives.

(This Section L.4(c) shall have a sunset date of June 30, 2000)

- d. The notice of hearing shall include:
 - (1) A statement of time, place and nature of the hearing.
 - (2) The names of the panel members.
 - (3) A statement that the hearing is held in accordance with subsection L of the conditions of faculty service.
 - (4) A copy of the notice of dismissal or suspension attached and incorporated by reference.
- e. At least 10 days before the hearing date each party shall provide to the hearing committee and the other party or parties a written list of the names and addresses of each witness the party intends to use at the hearing. No witnesses shall be used at the hearing other than those listed except for good cause shown or upon written agreement of the parties.
- f. Failure of either party to appear at the scheduled hearing shall be treated as follows: In the case of the faculty member, failure to appear shall waive the faculty member's right to appeal the decision. In the case of the university representative, failure to appear shall be treated as

resolution of the grievance in favor of the grievant. Failure of either party to appear may be excused for good cause by the committee, in which case, the hearing may be rescheduled.

- g. The record of the hearing shall include, to the extent such items are applicable, the following:
 - (1) All documents filed by the parties and all notices, orders, or other documents issued by or submitted to the Committee on Academic Freedom and Tenure in connection with the proceeding.
 - (2) Testimony received and considered.
 - (3) Record of objections and offers of proof and rulings thereon, which may be contained in the transcript.
 - (4) Findings.
 - (5) The written recommendation reflecting the decision of the hearing committee.

- h. Each party to the hearing shall be afforded an opportunity to respond and present evidence and argument on all issues involved. Each party shall have the right:
 - (1) At the party's own cost, to be accompanied by an advisor who may consult with and advise the party but shall not otherwise participate.
 - (2) To present witnesses and submit evidence, including documentary evidence.
 - (3) To question adverse witnesses.

- i. The following shall be observed with respect to the hearing:
 - (1) In accordance with the state's open meeting law, the hearing and the committee deliberations shall be conducted in executive session closed to the public, except that the faculty member may demand that all

proceedings be held in a public meeting (A.R.S. §38-431.03(A)(1)).

- (2) The hearing, but not the deliberations of the committee, shall be recorded by a court reporter and shall be transcribed upon the request of any party at that party's own cost.
- (3) The hearing may be conducted in an informal, collegial manner and without adherence to the rules of evidence required in judicial proceedings. The CAFT Committee shall exclude irrelevant, immaterial or unduly repetitious evidence.
- (4) The Chair of the hearing committee shall have the authority to issue subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence, and shall have the power to administer oaths. The subpoena shall be in writing and shall be served upon the witness in person. Members of the university community are required to comply with subpoenas issued pursuant to this procedure unless compliance would result in unavoidable personal hardship or participation beyond the terms of the contract.
- (5) The Chair shall preside over and conduct the hearing and shall rule upon all matters of procedure including the admission of evidence. The Chair shall also exercise control over the hearing to avoid needless consumption of time and to prevent the harassment or intimidation of witnesses.
- (6) Official notice of certain facts may be taken.
- (7) At the conclusion of the submission of all evidence, the hearing committee shall permit each party to make an oral or written summation.
- (8) The university bears the burden of proving the existence of just cause by a preponderance of the evidence.

- (9) A committee legal advisor, selected by CAFT from a list of qualified attorneys provided by the university, shall sit in attendance at the hearing and may be asked to comment on questions of procedure and admissibility of evidence and shall otherwise assist in the conduct of the hearing, but shall not vote. A person shall not serve as both a committee legal advisor and as an advisor or legal counsel in the proceedings for either of the parties. The legal advisor for the committee will be compensated by the university
 - j. The recommendation of the hearing committee shall be in writing; shall include findings of fact based exclusively on the evidence; and shall be presented to the university president within 30 days following the conclusion of the hearing except, upon good cause, the president may extend the recommendation date by an additional 30 days.
 - k. Upon receipt and review of the hearing committee recommendation, the university president shall approve, disapprove, or modify the committee recommendation or remand one or more issues for further consideration by the committee. The president shall issue a final decision in writing, no later than 45 days following receipt of the committee recommendation and record, that includes findings of fact and conclusions of law, separately stated. The president shall not be bound by the recommendations of the committee. Copies of the decision shall be mailed to the faculty member, and members of CAFT, and the effective date of the decision shall be ten (10) days following posting.
- M. Procedure to Review Allegedly Discriminatory or Unconstitutional Action (Including Violations of Due Process or Academic Freedom).
 - 1. A faculty member who receives an adverse decision concerning his/her promotion, tenure, nonrenewal or release from employment under subsection J may file a written complaint alleging that the adverse decision was a discriminatory action, or was based on unconstitutional grounds (including violations of due process or

academic freedom). This complaint must be filed with the office of the university president within 10 days of the faculty member's receipt of notice of the final adverse decision.

- a. "Receipt of notice" means delivery of written notice of the final adverse decision to the faculty member's last known address by certified mail, return receipt requested. If undeliverable, the written notice is deemed to have been received by the faculty member if properly sent to the faculty member's last known address.
- b. The faculty member shall have the right to a hearing before the Committee on Academic Freedom and Tenure (CAFT), or before such other appropriate committee as may be established by the university and the academic senate, but not both CAFT and such other appropriate committee; provided that the faculty member first exhausts any applicable alternate resolution procedures established by the university.
- c. Where alternate resolution procedures are not established, the written complaint shall be transmitted to the Chair of the hearing committee within seven (7) days after receipt by the office of the university president. The hearing shall occur no earlier than thirty days nor later than forty-five days after the filing of the complaint, except that with consent of both the university and the complaining party, or upon majority vote of the hearing committee, the hearing may be advanced or delayed.
- d. Where alternate resolution procedures are established by the university, those procedures will be initiated by the president within seven (7) days after receipt of the written complaint. The written complaint, if not resolved through use of the alternate procedures, shall be transmitted to the chair of the hearing committee within seven (7) days after completion of the alternate procedures or after thirty (30) days following the date on which the alternate procedures were initiated. The President may extend this deadline for up to thirty (30) days if the prospect for successful resolution is positive. The hearing shall occur no earlier than thirty (30) days nor later than forty-five (45) days after the written

notice is received by the chair of the hearing committee, except that with consent of both the university and the complaining party, or upon majority vote of the hearing committee, the hearing may be advanced or delayed.

2. The burden of proving discriminatory action or unconstitutional grounds shall be on the faculty member. The hearing procedures developed by each university shall provide for the following:
 - a. The right to an impartial hearing committee of not fewer than three committee members.
 - b. The right of each party to obtain access to all relevant, non-privileged documents relating to the allegations which are subject to the other party's control and which do not violate the privacy rights of non-parties; all disagreements relating to the disclosure of documents shall be decided by the chair of the hearing committee.
 - c. The right of the university and the faculty member to present witnesses and evidence and to question witnesses.
 - d. The right of each party, at the party's own cost, to be accompanied by an advisor who may consult with and advise the party, but shall not in any other way participate in the proceedings.
 - e. The hearing shall be recorded by a court reporter. A transcript may be obtained by any party at that party's own cost.
 - f. Written findings of fact.
 - g. The right of the university, faculty member and committee members to a copy of the written recommendation of the committee;
 - h. A closed hearing upon request of any party.
3. The recommendation of the committee shall be transmitted to the university president within thirty (30) days following the conclusion of the hearing except, upon good cause, the president may extend

the recommendation date by an additional thirty (30) days. No later than forty-five (45) days following receipt of the committee recommendation the president shall render a final determination in writing as to whether the challenged decision shall be affirmed or modified. A copy of the final determination shall be mailed to the faculty member and the committee members. The date of the mailing shall be the effective date of the decision.

N. Faculty Grievance Procedure

In accordance with ABOR Policy 6-904 (Grievance), each university shall provide an established grievance procedure to resolve any work related concerns of a faculty member, including but not limited to any complaint alleging a violation of the conditions of faculty service or any other rules of the Board or university relating to faculty members. The grievance procedure shall authorize a faculty member to initiate a grievance by filing with the chair of the designated faculty committee a written statement which describes the specific action(s) being challenged and any Board or university rule which has allegedly been violated.

O. Revisions

1. A comprehensive review of these conditions shall be undertaken no less frequently than once every five years. This review shall be conducted by a working group which includes representatives of each faculty senate to ensure faculty input in all stages of the review process.
2. No modifications to these conditions may be considered by the Board prior to consultation with representatives of the faculty senates.

P. Implementation

The president of each university shall establish, in consultation with the faculty senate, such additional policies and procedures consistent with this policy as may be needed to carry out the Conditions of Faculty Service, and such policies shall be set forth in full and not by reference to any other document.

Roy Spece's suggestions re Grievance Policy:

1. Section 4.d., last sentence, replace "to judicial appeal shall not be abrogated by this policy" with "relief in the courts shall not be affected by this policy." Rationale: The internal proceedings are not "judicial" in nature. Faculty should have a right to make their arguments before the courts, with the concomitant important right of jury trial, without regard to what happens internally.

2. In the second sentence of section 4.f., replace "should" with "might." Rationale: prevent any future argument that the faculty member must pursue each and every internal policy before going to the courts.

3. Section 4.t., rewrite to read: "No faculty member should be disciplined unless there is clear and convincing evidence of all facts predicate to the discipline. Otherwise the standard of proof shall be by a preponderance of the evidence." Rationale: The Faculty Senate already recommended a clear and convincing evidence standard as a predicate to discipline. The risk of error is simply too high with any lesser standard.

4. Section 4.u., add at the end of the section: "or in which he or she has a conflict of interest." Rationale: Without the addition most conflicts of interest are ignored.

5. Section 6.c.ii. add "improper" before "actions." Rationale: The Faculty Senate already recommended a "discovery" rule that is fair to aggrieved faculty. One can become aware of adverse actions without learning about underlying misconduct. A reasonable person will not be put on notice by the mere adverse action, but by both that and knowledge of the underlying misconduct.

6. Section 7.b.iii.(2)(a), second sentence, add ", but not limited to," after "includes." Rationale: This gives a broad definition to adverse action so as to maximize faculty rights to question improper conduct.

7. Section 7.b.xii.(3) add "bona fide" after "Unless." Rationale: Assure that mere articulation of reasons -- albeit groundless -- does not prevent relief.

8. Section 7.b.xii.(6), delete section (a). Rationale: University counsel have an inherent conflict of interest.

9. Section 7.b.xii.(6)(b), add: "The attorney shall affirm in writing that his or her role is to advise the committee as to how best to fulfill the goals that the committee articulates, and that his or her role is not to represent the interests of the University as such." Rationale: To caution against a bias in favor of the entity that chooses the attorney and pays the fees.

10. Section 7.b.xii.(14), at the end replace "pursuant to the provisions of the Administrative Review Act, Arizona Revised Statutes, Section 12-901 et seq." with "de novo, insofar as Arizona law does not prohibit that." Rationale: The Faculty Senate discussed this at length previously and came out in favor of guaranteeing faculty maximum. It doesn't make sense to limit appeals of the President's decisions, based on his discretion, to a judge, with no jury, deciding whether this discretion was used arbitrarily and capriciously.