MEMORANDUM
TO: Faculty Senate
FROM: Faculty Life Committee
RE: Proposed Mediation Document Amendments
DATE: October 30, 2000

I. THE MEDIATION COMMITTEE'S PROPOSALS AND THE PROVOST'S RESPONSES

(All page and other references are to the *Faculty Handbook*, 1999 ed., unless otherwise noted.)

After lengthy deliberations, the Mediation Committee made the following five proposed changes to the Mediation and Grievance Document (*Handbook*, Appendix B), and the Provost responded to each of the first four. The Provost's responses are placed immediately after each recommended change

(1) Add to part I.C (Definitions), p. 86: "The word 'petitioner' as used herein means the grievant who initiates the mediation and grievance process. The burden of proof rests upon a petitioner. If a Tribunal is convened because an administrator seeks to impose a severe sanction or dismiss a faculty member, the administrator is the 'petitioner' and has the burden of proof."

The Provost said: "I do not agree with this change. The grievant who initiates the mediation and grievance process is the petitioner. The burden of proof should be established separately."

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(2) Delete the present 8 paragraphs of text constituting part II.C.2 ("Constituting Hearing Tribunals"), pp. 89-90, and substitute therefor the following:

"Each hearing Tribunal will consist of three members selected by the processes described below.

"At the April meeting of the Faculty Senate next following adoption of this language, the Faculty Senate shall select 12 senior tenured members of the faculty of the University of Alabama [,each of whose FTE in teaching and/or research is 0.5 or greater,] to be Tribunal Board Members. The twelve should then be divided by lot into groups of four members each. The three groups shall serve terms of three, two, or one year(s) respectively. At each succeeding April meeting of the Faculty Senate, the Faculty Senate shall select 4 senior tenured faculty members (as above) to serve three-year terms as Tribunal Board members. The Senate shall fill any vacancies by selecting similarly qualified faculty members, who shall serve out the remainder of the term(s) vacated.

"The members of the Tribunal Board shall elect a chair to serve a three year term, and shall fill vacancies in the chair for the remainder of the term vacated.

"When it becomes necessary to have a Tribunal, the University Mediation Committee shall inform the chair of the Tribunal Board about the pertinent grievance or sanction. Tribunal Board members after discussion and consideration may recuse themselves, but the central importance of faculty participation in University governance requires that Board members recuse themselves only for compelling reasons such as bias or interest.

"The parties to the grievance or sanction shall choose the Tribunal members from those Tribunal Board members remaining. Beginning with the faculty party, each party shall alternately strike a name from the list until only three remain. If the chair's name is struck, the three Tribunal members shall determine on their chair, otherwise the chair of the Tribunal Board shall serve as Tribunal chair. If either party declines to strike, the other party may continue. If both parties cease to strike, the Tribunal shall be completed by taking names in alphabetical order from those remaining.

"A person who leaves the University's employment during the course of a grievance or a sanction may retain his or her seat on a Tribunal. In the event the person leaving the University chooses not to retain his/her seat, or if a Tribunal member is otherwise unable to continue, the remaining member(s) of the Tribunal shall proceed. Any person selected to a Tribunal may serve on the Tribunal until the work of the Tribunal is completed.

"Advisors appointed by the Mediation Committee may continue to assist the parties at their request, but otherwise than as herein stated the Mediation Committee shall have no further role in the proceedings of a Tribunal. The chair of the Tribunal Board will notify the office of Academic Affairs of the needs of the Tribunal, and will act as liaison from the Tribunal to the administration, in order to arrange locations, timetables, and the availability of desired and/or required resources which the University may or must provide. The chair of the Tribunal Board shall maintain a model set of timetables for Tribunals to consider when adopting their rules and procedures." (NOTE that the brackets were in the Mediation Committee proposal.)

The Provost said: "Please specify in line 2 what is meant by a 'senior' faculty member."

(3) Delete the first sentence of II.C.3 ("Procedures in Cases involving Formal Hearings"), p. 90, and substitute the following language:

"The Dean of the University of Alabama School of Law shall appoint legal counsel [from the University faculty or the Office of University Counsel] to assist the Tribunal, if the Tribunal decides that it needs legal advice. The Tribunal's attorney may be present at all sessions, including any prehearing meetings, whether or not the parties are represented by counsel. [Compensation for the Tribunal's attorney shall be arranged by that attorney in consultation with the Office of Academic Affairs, shall be paid by the University, and may consist, in whole or in part, in released time for a faculty member, or may be considered part of the attorney's duties if he or she is of the Office of University Counsel.] The Tribunal's attorney may not be an employee of the Office of the University Counsel if that Office has had, or is expected to have, any connection with the case." (NOTE: the brackets were in the Mediation Comm.'s report.)

The Provost said: "I have consulted with the Dean of the Law School regarding this item. We both agree that this section is inappropriate, as the Law School dean has no jurisdiction to

appoint attorneys in this manner."

(4) Add to the end of the 5th paragraph of II.C.3 ("Procedures in Cases involving Formal Hearings") for a paragraph which commences 'A record ...' on p. 90 of the Handbook, substitute the following language:

"Otherwise, if the University makes a transcript of any Tribunal hearing, it will provide a copy without cost to the faculty party. All paper and other costs generated by a Tribunal[, except the cost of the faculty member's attorney if any,] shall be borne by the University." (NOTE that the brackets were in the Mediation Committee's proposal.)

The Provost said: "It is not clear from the introductory sentence whether this item is to substitute for the fifth paragraph of II.C.3, or, instead, to be added at the end."

(5) The Mediation Committee also recommended a form which it drafted, for the use of grievants, to provide a uniform beginning point for all grievances. The Provost made no response to this recommendation. The form is approved and appended to the report of the Faculty Life Committee.

II. THE FACULTY LIFE COMMITTEE'S RECOMMENDATIONS

The President referred the Mediation Committee Report and the Provost's responses to the Faculty Life Committee. We have deliberated these proposals, taking into account the history of grievance procedures at the University of Alabama and the needs of the faculty. We make the following recommendations, and in a separate document have provided language to be inserted into the Grievance Document which would achieve these recommendations:

(1) [The Provost originally desired to eliminate attorneys from the grievance process.] We recommend that attorneys not be removed from this system. No attorneys are allowed at the mediation stage. When a Tribunal becomes necessary, matters between the contending parties are usually at such an impasse that interaction between them to resolve the dispute is likely to occur in an orderly fashion only if there is the assistance of persons professionally trained and used to handling disputes through orderly process. Further, the salary, position, rights, or privileges of a faculty member may be at stake. Moreover, the University will not wish to give up its ability to be represented by counsel.

(2) [The Provost originally desired to eliminate the provisions for recording Tribunal Hearings.] We recommend that the present provisions concerning the recording of tribunal proceedings not be changed so as to diminish the present power of parties to make a record of the proceeding.

(3) We agree with the Provost's objection to the first recommendation of the Mediation Committee, especially since the issue of burden of proof is settled by the 11th paragraph of part II.C.3 of the present Grievance Document, p. 91, and we recommend the following changes in place of that recommendation:

(a) Add to the "definitions" section, numbering appropriately: "'Petitioner' as used herein means the person who initiates the mediation and grievance process, either a faculty member by filing a grievance, or an administrator by bringing a severe sanction or seeking to dismiss a faculty member."

(b) Delete the parenthetical in the first sentence of the 3rd paragraph of part II.C.3, p. 90, which parenthetical says "(either the faculty member in grievance cases or the administrator who seeks to impose a severe sanction or dismiss a faculty member)".

Essentially, the Committee recommends moving this definition into the definitions section, as written.

(4) We agree with the changes proposed by the Mediation Committee in its second recommendation. We agree that the Faculty Senate is the proper body to elect Tribunal Board members. We agree that all hearing Tribunals should be drawn from such a Board, essentially by the process specified. We further agree that only those with an FTE of 0.5 or greater in teaching and or research should be eligible for selection.. We finally agree that a reduction in the number of Tribunal members from 5 to 3 will save time and money for the University without reducing the legitimacy and efficacy of Tribunals.

We do think some further changes are necessary.

–(a) We think that the Tribunal Board should be composed of 21 members, not 12, so that 7 should be selected each year, not 4. This change is necessary to enable grievants and administrators to have a sufficiently large panel from which to choose.

–(b) We think that the term of a chair of the Tribunal Board should be one year (not 3), as this will be a burdensome if honored post; moreover, a three-year term for a chair will inevitably mean the selection of a newly-elected Tribunal Board member as chair.

–(c) We think that a faculty member should be ineligible for reelection to the Tribunal Board for a period of three years after a term or part of a term as a Tribunal Board member. We further think that no one should be forced to serve on more than one Tribunal at a time.

–(d) We believe that the three Tribunal Board members finally chosen as a Tribunal should determine their own chair.

–(e) We believe that, when both parties cease to strike before completing a Tribunal of 3 persons, the remaining Tribunal members should be selected by lot.

Finally, there is the Provost's objection of the lack of definition of the term "senior" in the phrase "senior tenured members of the faculty." We propose to eliminate the word "senior" from the proposal.

(5) We agree with the Provost and the Law School Dean, that it will be awkward for the Law School Dean to select counsel for a Tribunal which desires counsel. We also think that

members of the University Counsel's office should never be chosen as counsel for the Tribunal. We think that, in order to facilitate the Tribunal's functioning without overburdening the University with the costs of several attorneys in a single hearing, the Tribunal that desires counsel should be required to canvass those attorneys whoalready serve on the various faculties of the University, to ascertain the willingness of any of them to help the Tribunal; that Mediation Committee's proposal to provide for payment for such attorney is a good one; further, that a list of attorneys on the University faculty be maintained by the Tribunal Board for such purposes; and finally, that a Tribunal which is unable to find a suitable attorney from among those attorneys already employed upon the University faculty be required to negotiate the matter of its counsel directly with the Office of the Provost, taking the chance that it will be unrepresented because of the cost of such counsel.

(6) We agree with the Mediation Committee's fourth recommendation in its entirety.

(7) We agree with the Mediation Committee's proposed form, with one important change. That form, as drafted, had provision at the end for copies to be sent to the Provost, the relevant Dean, and any relevant Department or Program Chair. We respectfully believe that notice to such parties at this stage is not consistent with the Grievance Document. The Document requires the Mediation Committee to inspect the grievance, as submitted; to ask the grievant for any further material or information the Committee feels it needs; and then to decide whether the statement rises to the nature of a grievance which should be allowed in our system. It would be inapposite to inform any administrator of the existence of a dispute, which the Committee decides is NOT grievable within our system. Therefore, we have removed the provision for copies. We append the modified form to our separate document.

Cornelius Carter, Wythe Holt, Rob Ingram, Chris Nagy, Joanne Terrell (Faculty Life Committee)