

~~This policy was approved during the spring semester, 1994.~~

## APPENDIX B

### MEDIATION AND GRIEVANCE SYSTEM

#### I. Introduction and Definitions

##### A. General Principles

In an academic community it is desirable that academic disputes (including grievances and sanctions) be settled fairly, rationally, expeditiously, and according to understood rules. It is important that faculty members participate as far as possible in their own governance and that of the University. ~~And~~ It is crucial that principles of academic rights, academic freedom, and contractual understanding be scrupulously upheld.

##### B. ~~Mediation and Grievance System~~ *Scope and Purpose of the System*

This Mediation and Grievance System is designed to ensure that each faculty member who has a grievance will be able to obtain prompt consideration of the issue(s) by administrators at the departmental and divisional level. The faculty member may also request consideration by the ~~Academic Vice President~~ *Provost/Vice President for Academic Affairs*, but this step is not required.

A faculty member who is not satisfied by the dean's decision, or who does not receive a timely decision from the dean, may appeal to the University Mediation Committee. The Mediation Committee will accept the faculty member's grievance for action if it decides that the ~~appeal describes action, as described in the appeal, would constitute~~ an improper and prejudicial action by an administrator or faculty committee and that the issues raised are sufficiently related to the concerns of an academic community. The ~~Academic Vice President~~ *Provost/Vice President for Academic Affairs* may, at the request of the faculty member, overrule a decision by the Committee to dismiss the grievance and instruct the Committee to accept the grievance for action.

After accepting a grievance for action the Mediation Committee will determine whether divisional administrators have had an adequate opportunity to deal with the issues, and may suggest additional administrative channels to be followed before further action is taken. The next step is for the Mediation Committee to ask the parties whether they are willing to try to resolve the issues through mediation.

It is expected that most grievances will be resolved through the normal administrative processes. The Mediation and Grievance Ssystem emphasizes the role of mediation when the grievant's appeals to administrators fail to produce a satisfactory solution. Problems which result in a grievance may not involve clear-cut distinctions between right and wrong. Mediation, when established as a matter of both practice and principle, can make it possible for the parties to reach a collegial resolution of honestly held differences of opinion.

If the issues cannot be resolved by administrative appeals or through mediation, then a faculty member whose grievance has been accepted for action becomes eligible to receive a full hearing before a Tribunal selected for that purpose. ~~And~~ Since mediation cannot succeed unless the parties choose to cooperate, the System permits the parties to bypass the mediation and move directly to a Tribunal hearing. This may be done at any time once any additional administrative appeals required by the Committee have been made.

##### C. Additional Aspects of the System

###### 1. *The Role of Attorneys*

If the parties to a grievance agree to permit mediation efforts, then they may not be represented or accompanied by attorneys at any of the meetings called as part of the mediation process, though they are free to consult attorneys before or after such meetings. This rule is imposed in order to minimize the adversarial nature of mediation meetings. If the grievance is not settled by mediation, and a hearing before a Tribunal is scheduled, the faculty member has the option of deciding whether the parties may be represented or accompanied by attorneys during proceedings before the Tribunal; the opposing party may not be represented or accompanied by an attorney during proceedings before the Tribunal unless the faculty member exercises the same privilege.

###### 2. *Restrictions in Grievances*

*If a grievance concerns a procedural impropriety in a matter of retention, tenure, or promotion, the grievance must be presented to the Mediation Committee within 90 calendar days following the date of notification to the faculty member of the final decision made by the appropriate administrator in the matter of retention, tenure, or promotion.*

The role of a hearing Tribunal is restricted when considering grievances arising from *retention, tenure, or promotion recommendations, or from recommendations made by properly constituted departmental or divisional faculty committees and any ensuing recommendations or decisions by administrators elected by the faculty or from recommendations made by the departmental or divisional faculty as a whole*. In such cases, the Tribunal will not substitute its judgment on the merits for that of the faculty committees or administrators. The Tribunal will restrict its attention to claims that the procedures followed were not in accord with the Faculty Handbook and any supplementary procedures adopted by the departmental

and divisional faculties.

### 3. Sanctions by Administrators

The Mediation and Grievance System also includes procedures to be followed when an administrator seeks either to impose a severe sanction\* on a faculty member or to dismiss a tenured or probationary faculty member or a full-time temporary faculty member before the end of the term specified by the Faculty Handbook or by a contract between the University and the individual. *Examples of severe sanctions include suspension from service for a stated period, reduction in academic year salary, or a violation of a written and duly approved departmental, divisional, or University policy, rule, or regulation that has a negative impact on the faculty member. Decisions made by administrators in the ordinary course of their administration that do not discriminate unfairly against the faculty member shall not be considered severe sanctions within the meaning of this Mediation and Grievance System. The Mediation Committee shall have the power to decide whether an action taken by an administrator constitutes a severe sanction; a decision adverse to the faculty member may be reversed upon appeal to the Provost/Vice President for Academic Affairs.*

### D. Definitions of Some Terms

1. "University" means The University of Alabama in Tuscaloosa, Alabama.
2. "Faculty" or "Faculty members" means one or more persons with tenured or probationary appointments to the faculty of the University.
3. "Administrators" are faculty members whose assignment to administrative duties is at least 50 percent or who hold administrative assignments at or above the level of departmental chairperson.
4. A "work day" is any day on which the University is in session, excluding weekends, University holidays, and the periods between the last day of final examinations and the first day of registration classes for the next term.
5. A "work week" is five work days.
6. Explanations of other terms appear in later sections of this document.

### E. Description of the Mediation Committee

The University Mediation Committee (herein sometimes referred to as the Committee) is composed of six faculty members who are not administrators and two administrators. The faculty members are elected by the Faculty Senate, at its regular November meeting, to staggered three-year terms, with two terms expiring on December 31 of each year. No more than two faculty representatives may be from any one academic division. Faculty members completing a term on the Committee are ineligible for re-election until two years have passed. Any faculty vacancy occurring on the Committee may be filled on a temporary basis by a majority vote of the faculty representatives remaining on the Committee; the Faculty Senate shall elect a faculty member to fill the remainder of the unexpired term. The President of the University or his or her designee chooses the administrative members from among the administrators of the University who are tenured or tenure-earning faculty members in one of the academic programs and who hold an administrative appointment in an academic area. Each January the Committee selects its chairperson from among the faculty representatives. The chairperson is responsible for coordinating and expediting the work of the Committee, ensuring that grievances normally are settled or are submitted to hearing Tribunals within no more than six weeks from the time the grievances are received by the Committee.

## II. Procedures

### A. Administrative Resolution of Grievances

Faculty members who believe that an improper action by a University administrator or faculty committee has affected them prejudicially shall attempt to resolve their problems through discussions with administrators, first with the heads of their administrative subunits (if any), and then with their deans. Faculty members who are not satisfied with the response received at the divisional level have the option of appealing immediately to the Mediation Committee or of seeking an administrative solution from the ~~Academic Vice President~~ Provost/Vice President for Academic Affairs before appealing to the Mediation Committee. Each administrator shall attempt to solve problems expeditiously. A faculty member who does not receive a decision within two work weeks after appealing to an administrator is entitled to appeal to the next higher administrator or, if the last appeal was at the divisional level, to the Mediation Committee.

### B. Mediation in of Grievances

Faculty members who have been unable to resolve their grievances through appeals to the administration may submit a written appeal to the Mediation Committee. An appeal to the Mediation Committee will describe in detail the nature of the grievance and will state against whom the grievance is directed. It may contain any ~~factual or other data~~ material which the grievant deems pertinent to the case. ~~The Mediation Committee will transmit a copy of the appeal to the respondent. The respondent may submit a written response; the Committee will transmit a copy of any such response to the grievant.~~

The Mediation Committee will ~~begin by deciding whether~~ *decide whether at least some of the facts alleged by the grievant will, if established, indicate that an administrator or a faculty committee has committed an improper and prejudicial action which is sufficiently related to the concerns of an academic community to be considered by the academic grievance system. The Committee may ask the grievant to clarify statements in the appeal, acting either as a whole or through specifically designated members, may meet with the grievant in order to clarify allegations presented in the appeal.* If the Mediation Committee decides that the facts alleged by the grievant do not warrant action, notice of this decision will be given to the grievant in writing; such a decision by the Mediation Committee will be final, except that the ~~Academic Vice President~~ *Provost/Vice President for Academic Affairs* may, at the request of the grievant, overrule the Committee and instruct the Mediation Committee to accept the case for action.

If the Mediation Committee decides that *at least some of the facts alleged justify accepting the grievant's case for action (or if its decision to the contrary is overruled by the Academic Vice President* ~~Provost/Vice President for Academic Affairs~~), its next steps will be *(1) to notify the grievant; (2) to notify the respondent by giving the respondent a copy of the grievance; (3) to provide an opportunity for the respondent to submit a written response; and (4) to determine whether divisional administrators have had an adequate opportunity to consider and respond to the grievant's complaint.* The Mediation Committee may suggest additional administrative channels to be followed before it will proceed. When the Mediation Committee is satisfied that the petitioner has sought appropriate administrative reviews, it will decide whether to try to bring about a settlement through mediation. If in the opinion of the Mediation Committee such a settlement is not possible or is not appropriate, or if either of the parties declines to participate in mediation efforts, or if the Committee or one of the parties subsequently decides to stop the mediation, the Mediation Committee will report this decision to each of the parties and to the ~~Academic Vice President~~ *Provost/Vice President for Academic Affairs* and will take no further action unless the grievant requests that a formal hearing Tribunal be convened. Refusing to participate in mediation or demanding that mediation stop will not be considered evidence of bad faith on the part of either party.

The mediation process will be informal, with the Mediation Committee attempting to facilitate a resolution of the problem by whatever techniques and procedures the Committee believes to be appropriate. Every person involved in mediation is expected to respect the confidentiality of the process, and every effort will be made to maintain an atmosphere which encourages collegial resolution of the problem. In particular, neither party may be represented or accompanied by an attorney at any of the meetings called as part of the mediation process, though they may obtain legal advice outside the meetings.

The Mediation Committee will ensure that the parties receive appropriate assistance by assigning a member of the Committee to serve as an advisor for each of the parties who requests such aid; the parties may suggest the name(s) of Committee members whom they would prefer as advisors and the Committee will consider these suggestions when deciding whom to assign. The chairperson of the Mediation Committee will not serve as an advisor. The advisors assigned shall not be graduates of a law school; they may represent their advisees at meetings called as part of the mediation process and in any subsequent hearings, but will play no other role on the Mediation Committee in connection with a case on which they serve as advisors. Communications between an advisor and advisee shall be confidential throughout the proceedings provided for in this document. ~~The advisors are not qualified to give legal advice; any party who desires legal advice should consult an attorney meant to give, nor shall they give legal advice.~~

The Mediation Committee *or members thereof* may meet privately with either of the parties or with other informed persons in order to explore the possibility of finding a resolution upon which the parties can agree.

The mediation process will continue until a settlement satisfactory to the parties is reached or until the Mediation Committee or one of the parties decides to stop mediation.

*The Chair of the Mediation Committee shall maintain a file on each instance, which when closed shall be deposited in University Archives with access thereto limited to the President of the University. All other files of committee members relating to specific instances shall be destroyed when the instances are closed.*

## C. Formal Hearings

### 1. Requirements for Formal Hearings

A faculty member becomes eligible to receive a formal hearing by a Tribunal if (1) the faculty member's appeal to the Mediation Committee is accepted for action and (2) the Mediation Committee is satisfied that the faculty member has sought appropriate administrative reviews. In such instances, the Mediation Committee will help the parties establish a hearing Tribunal when requested to do so by an eligible faculty member.

The University is required to provide ~~an opportunity for~~ *to the affected faculty member the option of a formal hearing by a Tribunal in cases where an administrator seeks to impose a severe sanction, such as suspension from service for a stated period, or to dismiss a tenured or probationary faculty member or a full-time temporary faculty member. ("Dismissal" means terminating an appointment before the end of the term specified by the Faculty Handbook or by a contract between the University and the individual.) Any such action by an administrator will be preceded by: (1) discussions between the faculty member and appropriate administrative officers looking toward a mutual settlement; (2) If a mutual settlement is not achieved, the faculty member will be provided a written statement of charges, framed with reasonable particularity by the administrator; (3), and there will be an informal inquiry by a standing committee which will determine whether in its opinion proceedings should be continued, without its opinion being binding on the administrator. (In divisions which have a regular standing committee of faculty members elected to serve*

as advisors to the dean, the administrator may ask that committee to perform the duties specified in (3); otherwise, these duties make the informal inquiry otherwise, the inquiry will be performed by the University Mediation Committee.) If during the process the parties reach agreement, no further steps are necessary.

If the administrator decides to proceed with the case after receiving the advisory opinion described in (3) results of the informal inquiry, the Mediation Committee will inquire whether the respondent faculty member waives the right to a hearing. If the respondent faculty member waives the right to a hearing, the University may impose the penalty requested by the administrator or any lesser penalty; otherwise, the Mediation Committee will help the parties establish a hearing Tribunal.

*In formal hearings, the petitioner is the faculty member in cases involving grievances. The administrator is the petitioner in cases where an administrator seeks to impose a sanction or to dismiss the faculty member.*

## 2. Constituting Hearing Tribunals

~~The~~ Each hearing Tribunal will consist of five members selected by the processes described below.

Each August, the ~~Academic Vice President~~ Provost/Vice President for Academic Affairs and the President of the Faculty Senate will use a random selection process\*\* to identify a panel of 60 tenured faculty members. Members of hearing Tribunals established during the ensuing year will be chosen from this panel. The same procedure will be followed to augment the panel by 10 or more persons whenever the University Mediation Committee finds that fewer than 45 panel members are available to hear a given case.

When a hearing Tribunal is to be established, the University Mediation Committee will give members of the panel an opportunity to recuse themselves. The central importance of faculty participation in University governance requires that panel members be able to recuse themselves only for compelling reasons such as bias or interest. The panel will be augmented if necessary in order to ensure that the number of panel members remaining after recusals is at least 45.

The Committee will then provide the two parties with a list of those who have not recused themselves. Each of the parties will have one work week in which to choose one person from the list to serve on the Tribunal. After the parties have made their choice(s) or the time for doing so has passed, the list will be reduced further by removing the names of any remaining administrators. The hearing Tribunal will consist of five members, including those chosen by the parties if any, with the other members selected from the reduced list by each party alternately striking a name from the list until only the requisite number of names remain. The faculty party shall have the first strike. If either party declines to strike, the other party may continue; if both parties cease to strike, the Tribunal will be completed by taking names in alphabetical order from those remaining on the list.

The Tribunal will elect its own chairperson from among the Tribunal members who are not administrators.

*A person who leaves the University's employment during the course of a grievance may retain his or her seat on the 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 members of the Tribunal shall proceed.*

The University Mediation Committee, or designee from that Committee, will coordinate this selection process, will inform members of the hearing Tribunal of their selection, and will arrange a time and place for the Tribunal members to meet to elect their chairperson. Thereafter the Mediation Committee will have no role in the proceedings, except that the advisors appointed by the Committee will continue to assist the parties at their request.

Each August, the ~~Academic Vice President~~ Provost/Vice President for Academic Affairs and the President of the Faculty Senate will select a senior faculty member to provide assistance to Tribunals established during the ensuing year. This liaison person will be responsible for supplying any support services or advice needed by Tribunals in arranging hearings and in establishing timetables and schedules which will result in fair and expeditious hearings. In particular, the liaison person will prepare a model set of timetables for Tribunals to consider when adopting their rules.

## 3. Procedures for in Cases Involving Formal Hearings

The hearing Tribunal, if it decides that it needs legal advice, shall, in consultation with the liaison person described above, retain an attorney to advise it; the Tribunal's attorney may be present at all sessions, including any prehearing meetings. 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.

Each party will be permitted to choose an advisor who is ~~not~~ neither an attorney nor a member of the Tribunal to give assistance (but not legal advice) during the proceedings. The parties may consult attorneys before or after any session of the Tribunal. The faculty member has the option of deciding whether the parties may also be represented or accompanied by attorneys during proceedings before the Tribunal; the opposing party may not be represented or accompanied by an attorney during proceedings before the Tribunal unless the faculty member exercises the same privilege. The advisors (and attorneys of the parties when attorneys are involved) may accompany and represent the parties throughout the proceedings, performing any of the actions permitted to the parties.

The petitioner (either the faculty member in grievance cases or the administrator who seeks to impose a severe sanction or to dismiss a faculty

member) will supply the respondent and the Tribunal with a written statement of specific charges at least twenty days prior to the hearing. The statement of charges will set forth the facts and issues which the petitioner wants the Tribunal to consider; this statement may differ from the appeal or statement which the petitioner made earlier in the Mediation and Grievance process. The respondent will supply the petitioner and the Tribunal with a written response to the charges as soon as possible and no later than one work week before the time set for the hearing.

The hearing Tribunal will consult the parties before setting a time for the hearing and may, with the consent of the parties, hold joint prehearing meetings with them in order (i) to simplify the issues, (ii) effect stipulations of facts, (iii) provide for the exchange of documentary or other information, or (iv) achieve such other prehearing objectives as will make the hearing fair, effective, and expeditious.

A record (tape recorded or otherwise) of the hearing will be made by the hearing Tribunal. Each party may make an independent record of the hearing. The Tribunal will make a transcript of the hearing whenever the hearing concerns charges brought by an administrator, and a copy will be made available to the faculty member without cost.

The Tribunal, in consultation with the parties, will exercise its judgment as to whether the hearing, or portions of the hearing, should be public or private. The Tribunal may bar prospective witnesses from hearing the testimony of other witnesses.

Each of the parties, and the hearing Tribunal, shall have the right to name an observer. These observers will be permitted to attend all of the proceedings, public or private, except for deliberations of the Tribunal.

The hearing by a Tribunal is an administrative hearing and the proceedings will be informal rather than those used in courts of law. The Tribunal may admit any evidence which is of probative value in determining the issues, subject to the Tribunal's judgment as to the relevance, credibility, and weight of the evidence. The Tribunal may ask the parties to produce evidence on specific issues, may examine witnesses, and may call and examine its own witnesses.

Each party will have the right to confront and cross-examine all witnesses. If witnesses cannot or will not appear, but the Tribunal determines that the interest of justice require admission of their statements, the Tribunal will identify the witnesses, disclose their statements, and if possible provide for interrogatories or depositions. Each party will have the right to rebut any evidence heard by the Tribunal.

The Tribunal may grant adjournments of reasonable length to enable either party to investigate evidence if the Tribunal believes a valid claim of surprise is made concerning that evidence.

The burden of proof rests with the petitioner and will be satisfied only by a preponderance of the evidence in the record considered as a whole.

The University administration will cooperate with the hearing Tribunal in securing witnesses and making available documentary and other evidence needed by the parties or the Tribunal.

Except for such simple announcements as may be required, covering the time of the hearing and similar matters, public statements and publicity about the case by anyone concerned will be avoided so far as possible until proceedings have been completed.

The hearing Tribunal will make findings of fact concerning each allegation in the statement of charges, deciding whether the allegation has been established by a preponderance of the evidence. The Tribunal's findings of fact and recommendations will be based solely on the hearing record.

#### **4. A Restriction on the Role of Hearing Tribunals**

The role of a hearing Tribunal is restricted when considering grievances arising from *retention, tenure, or promotion recommendations, or from recommendations made by properly constituted departmental or divisional faculty committees and any ensuing recommendations or decisions by administrators elected by the faculty or from recommendations made by the departmental or divisional faculty as a whole*. In such cases, the Tribunal will restrict its attention to claims that the procedures followed were not in accord with the Faculty Handbook (and any supplementary procedures adopted by the departmental and divisional faculties); the functions of the Tribunal will be the following:

- a. to determine whether the recommendations or decisions of the faculty committee(s) and administrator(s) involved were made in accordance with the published policies of the department, division, and University, with the understanding that the hearing Tribunal should not substitute its judgment on the merits of the case for those of faculty committee(s) and administrator(s);
- b. to request reconsideration by faculty committee(s) or administrator(s) when the hearing Tribunal believes that proper procedures were not followed in considering the issues (in such instances, the Tribunal should indicate the respects in which it believes that the procedures may have been improper or inadequate);
- c. to provide copies of its report and recommendation to the faculty member, the faculty committee(s) and the administrator(s) concerned, and the ~~Academic Vice President~~ *Provost/Vice President for Academic Affairs*.

#### **5. Findings and Reports of Hearing Tribunals**

Except in the cases covered by Section II-C4, the Tribunal will report its findings and recommendations to the University President. The petitioner

and respondent will be notified of the Tribunal's decision in writing and will be given a copy of the Tribunal's report to the President.

When hearing a case which involves dismissal of a faculty member or imposition of a severe sanction, the Tribunal will decide whether adequate cause for the proposed action has been established by the evidence in the record and will report its decision to the President of the University. If the hearing Tribunal finds adequate cause for dismissal, it also may report that the adequate cause involves "moral turpitude",\*\*\* warranting dismissal without normal notice or terminal pay. If the hearing Tribunal finds that adequate cause for dismissal or imposition of a severe sanction has been established, but believes that a less severe penalty would be more appropriate, it will so recommend, with supporting reasons.

In cases involving dismissal of a faculty member or in cases where the faculty member has prevailed, the Tribunal may recommend to the President that payment of a reasonable amount be made to the faculty member to help compensate the faculty member's attorney. *If the Tribunal makes no such recommendation, the President or the Provost/Vice President for Academic Affairs* may request the Tribunal to do so.

## **6. Review by the University President**

The President's review will be based on the record of the hearing. Written arguments by the parties involved in the hearing or by their representatives will be accepted by the President if submitted within 10 days after the parties are notified of the Tribunal's decision. *Either* the decision of the hearing Tribunal will be ~~either~~ sustained or the proceeding *will be* returned to the Tribunal with specific objections. The Tribunal will then reconsider, taking into account the stated objections and receiving new evidence if necessary. The President will make a final decision only after study of the Tribunal's reconsideration.

## **III. Approval, Modification, and Review**

### **A. Approval**

This Mediation and Grievance System was recommended by a voting majority of the faculty members of the University, voting majorities of the faculty members of a majority of the academic divisions of the University, by the ~~Academic Vice President~~ *Provost/Vice President for Academic Affairs*, and was approved by the President.

### **B. Modification**

Proposals for changing this Mediation and Grievance System will not take effect until they have received consent similar to that described in the previous paragraph for ratification of the original System.

### **C. Review**

This Mediation and Grievance System will be reviewed ~~three years after implementation. Subsequent reviews will occur~~ whenever the following conditions are met: (1) at least three years have elapsed since the end of the preceding review and (2) a review is scheduled by the ~~Academic Vice President~~ *Provost/Vice President for Academic Affairs* or is recommended by the Faculty Senate.