


MEMORANDUM

University of Washington/School of Law JB-20/Seattle, WA 98105

Date: January 27, 1993
From: Tom Andrews 
Chair
To: Faculty Council on Faculty Affairs
Subject: FINAL DRAFT OF ADJUDICATION PROCEDURES

Attached is the final version of the adjudication procedures as adopted at our last meeting on Friday, January 22, 1993. This version includes the changes we made at our session on Friday, but unlike previous drafts, it does not show those changes in underline format. For that reason, we are circulating the minutes from Friday with this final version, and you may want to read those minutes to refresh your recollection as to what we did on Friday. But for your convenience, let me remind you of the principal changes we made: (a) deletion of the second sentence of subsection 28-33.F(4) on page 9, relating to diversity on panels; (b) deletion of "alternates" on panels (former subsection 28-33.I) and replacement of alternates with power in the Hearing Officer to break deadlocks if, due to loss of panel members, there is a tied decision, new second sentence in subsection 28-54.A. (page 35); and (c) the deletion of the "waiver" by the Administration of its right to be represented by counsel where a faculty member has elected to waive representation by counsel, section 28-52.G. (page 29), and the consequent simplification of the rights of nonparty participants of right, section 28-51.B. (pages 24-25).

I have reviewed this version to check on the manner in which our changes have been incorporated and am satisfied that it reflects our votes and our intent. But since this is the first opportunity any of you has had to see the final version, complete with Friday's changes, I ask you to read it carefully and call Karen's attention (or my attention) to any inaccuracy in implementing the Council's wishes by close of business on January 29 (Friday). Please notice that Karen has made a few additional stylistic and organizational changes to improve the overall flow. In particular, she has moved old sections 28-52.C. and D. later in that section to 28-52.F. and G. None of her changes, so far as I can tell, are substantive.

As you know, on Friday we voted on the completed document, contingent on the implementation of that day's changes. It was my assumption then that we did not require another meeting to vote out the conformed document, and I am

UW Faculty Senate Records
Accession No 99-102, Box 4

still of that view. But if any of you believes that such a meeting is required, please let me know by close of business this coming Friday, January 29.

Assuming that no one calls for a final meeting, my plan is to circulate this version (with any corrections you note) to the Senate Executive Committee and other interested parties at the beginning of next week. I have placed this item on the agenda for the February 8 Senate Executive Committee, and I believe it important to let the Committee members have the full proposal as far in advance of that meeting as possible. I hope that you will agree that this is worthwhile. My plan is to spend as much time at the February 8 Executive Committee meeting presenting our Council's proposal as the Chair and the Committee require. I hope that as many of you as are able will attend that meeting and add your voices in support and explanation of the proposal.

I am aware, of course, that there may be members of our Council who disagree sufficiently with the Council's final version that they wish to express a dissenting view. If any of you has such a dissent that he or she wishes to circulate to the Senate Executive Committee, please deliver it directly to Susan Folk in the Faculty Senate Office, with a copy to Katie Murray for circulation to the FCFA.

Finally, let me thank each of you for the extraordinary effort in helping to bring this project to completion at the level of our Council. Your conscientious dedication to making this university a better community will probably go largely unnoticed by most of the faculty. Nonetheless, I firmly believe that the time and energy that you have spent this past quarter, and in some cases during the past year, on the adjudication procedures will ultimately lead to a fairer, more humane system of resolving disputes at the university.

UNIVERSITY OF WASHINGTON
FACULTY SENATE
FACULTY COUNCIL ON FACULTY AFFAIRS

The Faculty Council on Faculty Affairs met on Friday, January 22, 1993 at 12:30 p.m. in the Faculty Club. Chair Thomas Andrews presided.

PRESENT: Professors Andrews (Chair), Ammerlahn, Brandt, Eberhardt, Ehreth, Fitzpatrick, and Kaisse; ex officio members Helleloid, Johanson, Lalime, McFeron, and Olswang; guests: Professors Price-Spratlen and Worthington-Roberts; guests: Code Drafter Karen Boxx and Professional Staff Organization Representative Susan Geier.

ABSENT: Professors Gunthroth and Stewart;* ex officio members Somani,* Spratlen* and Stein.*

* Excused.

Minutes of the January 12 meeting
The minutes were approved.

Adjudication procedures
Consideration of the 16th draft

The Council considered the draft making the following changes and comments:

1. Section 28-33F 1 and 4 Composition

The Chair requested clarification as to the Council's intent with regard to these two paragraphs. He expressed the view that there is a need to have a general statement in subparagraph 4 that would address all unlawful discrimination and a mandate for the Adjudication Panel chair to take that into consideration when composing the panel. As it stands paragraph 4 only addresses racial discrimination. He noted that subparagraph 1 appropriately spells out gender and racial discrimination and includes all other unlawful discrimination. The Chair also noted that the second sentence of subparagraph 1 would not fit well with other cases such as age discrimination. He expressed preference for a general mandate calling for diverse representation for all kinds of discrimination. The Chair also noted that subparagraph 4 does not distinguish between three and five member panels. In response, the point was made that during the marathon meeting, Professor Lomawaima said that the Special Committee on Minority Faculty Affairs also sought to include minority representation in cases involving ethnic minority faculty even in cases where discrimination was not alleged because racism is so pervasive. At the same time, members felt that the current statement in subsection 28-33F.4 was confusing and duplicative of what was in 28-33F.1.

The Council unanimously agreed on the principle that it wanted to mandate an attempt at diverse representation even where discrimination is not alleged.

Pursuant to the above decision, and with a view to having a general statement on diverse representation of minorities, a motion was made to delete the second sentence of 28-33F.4. The motion was unanimously approved.

2. 28-33F.1

"Only" was deleted from the second sentence.

3. 28-33F.4 (old third sentence)

Replace "a party's the" with "a person's"

4. 28-33.I Alternates

The Council discussed at length the need for alternate members of three member hearing panels. It was noted that the use of alternates was a significant use of the alternate's time, usually wasted. In the rare instances in which regular panel members are lost, and the panel is equally divided, the Hearing Officer could be given a vote. The Council discussed and rejected the idea that such a tie-breaking power should be coupled with a right to appeal to a faculty appeals panel.

The Council unanimously agreed to delete paragraph 28-33.I and at the appropriate place at the end of the draft insert a tie breaking power in the hearing officer when the panel has lost one member and when there is an even split.

5. 28-35.C

The Chair noted that reference should be made here and throughout the text to "conciliation/mediation proceedings" as opposed to only the Conciliation procedure laid out in Chapter 27.

6. Section 28-37B. Last sentence

Change "investigate" to "review".

7. Section 28-41B, point 6

Replace "racial or ethnic" with "unlawful"

8. Section 28-41C. Add the following new sentence:

If the person with whom the conversation occurred has a different record that person shall immediately circulate a statement in the document detailing the differences.

The Chair informed the Council that Professor William Andersen has confirmed to him that he does believe it was not the intent of the new Administrative Procedures Act to rule out ex parte communications in the brief adjudicative procedures, provided that these are memorialized and the memorialized version is distributed to all parties.

9. Section 28-51B.6

For "pro se" read "on his or her own behalf"

10. Section 28-52 A and B

A. First sentence, delete "after appointment"

B. After "within 10 days" insert "after appointment"

11. Section 28-52D and E.

Vice Provost Olswang said that this paragraph would not be acceptable to the administration. He also said that he does not think it is fair or appropriate that other parties require deans, chairs and other administrators to waive their rights. In response the Chair noted that the Council inserted this provision after he had discussed the issue with Senior Assistant Attorney General Lloyd Peterson who expressed the view that the administration would continue with that waiver. The Chair also said that the Council never intended to impose this provision—it was understood that the President would have to agree to it. Vice Provost Olswang reiterated that the waiver would not be acceptable to the administration.

The view was expressed by one member that the Council cannot impose this provision on the administration and if it will not pass, the Council should not make false representations or create a crisis where this issue is given high profile. A motion was made to delete the second sentence of 28-52D as well as the second sentence of paragraph E.

The view was expressed that the advantage of retaining the provision would be not to embarrass the administration but rather to force an official reversal of it at the President's level.

Another view expressed was that deleting the provision would provide the opportunity to change the language and still be consistent with the APA in that anyone can have legal counsel.

By a vote of 6 to 1 the Council agreed to delete paragraph D and the second sentence of paragraph E. The Chair noted that this decision assumes that Ms. Boxx will make conforming changes to the draft not necessarily limited to E.

12. Section 28-52F

Add the following language in this section conferring power to make summary disposition:

On any or all of the issues where there is no disputed fact

The Chair noted that implicit in the summary disposition provision is that the panel has the right to issue summary disposition regardless of whether the parties disagree.

Insert language providing that if the hearing panel finds it necessary to take evidence on the question of relief it can do so.

13. Section 28-52 F.2, third sentence

Insert "and the basis for that disposition" at the end of the sentence.

14. Section 28-52G, first sentence

Replace "trial" by "hearing"

15. Section 28-52G, last sentence

By a vote of 4 to 2 the Council deleted the phrase "or as soon thereafter as the necessary persons can be assembled."

The Council then unanimously requested Ms. Boxx to insert a general statement providing that if the hearing panel misses a deadline for extraordinary circumstances that would not void the procedure.

16. Section 28-53A.6

Add at the end of the sentence " and the objection is sustained:

17. Section 28-53C, first sentence

Insert "and or the relief requested" after "in the case"

18. Section 28-54A, first sentence

Insert "end of the" after "the later of the".

19. Section 28-54 B, third sentence

Insert ", any party or nonparty participant of right" after "economic relief to a faculty".

20. Section 28-54 B, last sentence

Insert "recommend" after "the Panel has authority to"

21. Section 28-54C, first sentence

Replace "shall receive copies of" by "shall be delivered copies of"

22. Section 28-61 B, 7th sentence

Vice Provost Olswang said that this sentence limits the basis on which the President may act and that it will be difficult for the President to accept it.

The Chair said that the Council discussed that issue and decided that it wanted to limit the basis for reversing decision because the Council recognizes that the existing Code language to affirm or remand was a long negotiation and the Council would have to justify any departure from that provision.

23. Section 28-61E

Insert "parties" between "shall be sent to the" and "Chairperson of the Adjudication Panel".

The Council then approved the draft as a whole with the amendments agreed to with the caveat that the Chair will circulate the final text to all Council members and ask all members, particularly those not present at this meeting, to communicate with him their acceptance of the final document.

The meeting was adjourned at 2:30 p.m.

Katie Murray
Recorder

ADJUDICATIVE PROCEEDINGS FOR
THE RESOLUTION OF DIFFERENCES

Draft for January 19, 1993 Meeting of FCFA

TABLE OF CONTENTS

	Page
SECTION 28-31. DEFINITIONS	2
A. Adjudication Panel.....	2
B. Brief Adjudication.....	2
C. Comprehensive Adjudication.....	2
D. Hearing Officer.....	2
E. Hearing Panel.....	3
F. Day.....	3
G. Party.....	3
H. Nonparty participant of right.....	3
I. Permissive nonparty participant.....	3
J. Faculty member.....	4
SECTION 28-32. CASES SUBJECT TO ADJUDICATIONS	4
A. Administratively initiated.....	4
B. Faculty initiated.....	4
SECTION 28-33. ADJUDICATION PANEL AND HEARING PANELS	5
A. Brief Adjudications.....	5
B. Adjudication Panel.....	6
C. Hearings Officers.....	6
D. Selection of Student/Staff members.....	7
E. Size of Hearing Panels.....	7
F. Choosing Members of Hearing Panels.....	8
G. Role of Hearing Officer.....	9
H. Role of other Panel Members.....	9
SECTION 28-34. BURDEN AND STANDARD OF PROOF	10
SECTION 28-35. TIME LIMITATIONS ON INITIATING ADJUDICATIONS	10
A. Provost Initiated Adjudications.....	10
B. Faculty Initiated Adjudications.....	10
C. Conciliation.....	11
D. Untimely Filing.....	11
SECTION 28-36. MANNER OF INITIATING ADJUDICATIONS	12
A. Filing Notices of Request with Faculty Secretary.....	12
B. Response by Party against whom Relief is Sought	12
C. Action by Chairperson of Adjudication Panel....	14

D.	Emergency Suspension.....	15
SECTION 28-37.	DISQUALIFICATION OF HEARING PANEL MEMBERS	16
A.	Causes for Disqualification.....	16
B.	Challenges for Cause.....	16
C.	Disqualification for Lack of Availability.....	17
D.	Appointment of Alternate.....	17
SECTION 28-41.	BRIEF ADJUDICATIONS	17
A.	Determination to use Brief Adjudication.....	17
B.	Limitations on the use of Brief Adjudication...	19
C.	Procedure.....	20
D.	Conversion of Brief Adjudication to Comprehensive Adjudication.....	21
E.	Written Decision.....	22
F.	Record.....	22
SECTION 28-51.	COMPREHENSIVE ADJUDICATIONS - NONPARTY PARTICIPANTS	23
A.	Permissive Nonparty Participants.....	23
B.	Nonparty Participant Rights.....	23
SECTION 28-52.	COMPREHENSIVE ADJUDICATIONS - PRELIMINARY PROCEEDINGS	25
A.	Panel Preliminary Review.....	25
B.	Notice of Prehearing Conference.....	26
C.	Prehearing Conference Procedure.....	26
D.	Summary Disposition.....	27
E.	Prehearing Order.....	28
F.	Determination of Open or Closed Hearing.....	29
G.	Right to Counsel.....	29
H.	Amendments to Prehearing Order.....	29
I.	Collection of Evidence.....	29
J.	Recording of Meetings or Conferences.....	31
K.	Discovery Orders.....	31
SECTION 28-53.	COMPREHENSIVE ADJUDICATION - PROCEDURE AT HEARING	32
A.	Persons Entitled to be Present.....	32
B.	Recording of Proceedings.....	32
C.	Evidence.....	33
D.	Course of Hearing.....	34
E.	Panel Discretion re: Evidence Presented.....	34
F.	Witnesses.....	34
G.	Adjournment of Proceedings.....	34

SECTION 28-54. COMPREHENSIVE ADJUDICATION - DECISION	35
A. Time Period.....	35
B. Content.....	35
C. Delivery.....	36
SECTION 28-61 REVIEW PROCEDURES	36
A. Brief Adjudication Decisions.....	36
B. Decisions of Comprehensive Adjudication.....	37
C. Review of Decisions Where President is a Party	38
D. Procedures on Remand.....	40
E. Distribution of Final Decision Upon Review.....	40
SECTION 28-71 TIME DEADLINES	41

**REVISIONS TO FACULTY CODE PROVISIONS
REGARDING ADJUDICATIONS (CHAPTER 28)**

Adopted by Faculty Council on Faculty Affairs
January 22, 1993

CHAPTER 28

**ADJUDICATIVE PROCEEDINGS FOR THE
RESOLUTION OF DIFFERENCES**

This chapter sets forth the adjudicative procedures used to resolve disputes involving faculty members that cannot be resolved by informal means. Informal dispute resolution procedures are available at any time during the resolution process, including the time period after a hearing has been requested and before a final decision has been reached. Such procedures include the Conciliation procedure through the Ombudsman's office. The parties are strongly encouraged to use those procedures and other informal mediation procedures whenever possible.

These procedures comply with the requirements of the Washington Administrative Procedure Act (RCW ch. 34.05). There are two types of adjudication: the Brief Adjudication, held before a Hearing Officer and used in cases that do not warrant an extended fact-finding hearing, and the Comprehensive Adjudication which uses a Hearing Officer as well as a faculty panel, or in some cases, a faculty/student or staff panel. Results of these adjudications are ultimately appealable to the