

MEMORANDUM

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

Date: March 9, 1993
From: Tom Andrews *Tom*
To: Faculty Council on Faculty Affairs
Subject: Annotated Adjudication Proposal

Enclosed is a copy of the adjudication proposal with revised comments. As you will see, the comments have been amplified considerably from the version you have seen before. My goal has been to provide a clear explanation of the working of each section where that seemed necessary and to give the Council's justifications for the provisions it finally adopted. I am still not sure that the comments are expansive enough. **Please give me your thoughts and suggestions by the end of the week.** The more specific your suggestions, the better. My hope is that Karen and I can put this in a form to circulate to the Senate Executive Committee early next week. Don't underestimate the potential importance of these comments. Unlike oral remarks, these comments will be there for SEC members and others to return to for clarification. So it is important that they reflect the best explanation and justification that the Council can provide for its work.

Quite apart from the foregoing task, I want to take the opportunity to encourage as many of you as are able to **attend the Senate Executive Committee meetings discussing the adjudication proposal.** The next meeting is scheduled for Monday, March 15, at 2:30 in the Regent's Room in the Administration Building. Another meeting is scheduled for March 29, again at 2:30 in the Administration Building, although I am not sure where in the building that meeting will be held. Judging from the discussion held on March 1, the SEC has a lot of questions about and some difficulties with the Council's proposal. I think that it is fair to say that the more of you who can come and be heard on the issues the better.

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

REVISIONS TO FACULTY CODE PROVISIONS

REGARDING ADJUDICATIONS (CHAPTER 28)

Adopted by Faculty Council on Faculty Affairs
January 22, 1993

WITH ANNOTATIONS

The comments that follow each section are intended to explain the Council's decisionmaking process in making the revisions in the respective Code sections.

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 President, except for cases where the President is a party to the controversy, which are appealable to the Board of Regents. Subject to the provisions of RCW ch. 34.05 relating to exhaus-

tion of administrative remedies, parties shall avail themselves of these proceedings prior to seeking review beyond the University.

SECTION 28-31

DEFINITIONS

The following terms used in this chapter shall have the meanings set forth below:

A. Adjudication Panel: the standing committee of 24 faculty members, selected pursuant to section 28-33.B. Faculty members of any Hearing Panel or other decisionmaking group for a specific case are selected from the Adjudication Panel.

B. Brief Adjudication: an informal adjudication used for cases involving a limited number of persons, simple factual issues and minor impact on the persons involved. Section 28-41 sets forth the types of cases for which Brief Adjudications are used and the procedures to be followed.

C. Comprehensive Adjudication: the formal hearing process used for all cases except the minor cases that are resolved with Brief Adjudications. Sections 28-51 through 28-54 set forth the procedures to be followed.

D. Hearing Officer: an attorney appointed by the Chair of the Faculty and the President, who performs the following functions: (1) for Comprehensive Adjudications, he or she coordinates the Comprehensive Adjudication but does not have voting power on the final decision; and (2) for Brief Adjudications, he or she conducts the Adjudication without a Hearing Panel and is the initial decision maker, subject to review of a panel of faculty. The Hearing Officers' qualifications and appointment procedure are specified in section 28-33.C.

E. Hearing Panel: a group of three to five members of the Adjudication Panel and in some cases, two students or staff members, who preside over Comprehensive Adjudications. The composition of a Panel for specific types of cases, and the method of selecting members of a Panel, are set forth in section 28-33.D. through F.

F. Day: any calendar day. Any time period specified in this chapter shall not include the day of the act or event from which the time period begins to run.

G. Party: the person who has requested an adjudication and the person or persons whose actions or failure to act are identified in the petition as having given rise to the grievance.

H. Nonparty participant of right: the person or persons who are alleged to be the victims of any harassment, discrimination or other wrongdoing alleged in the Petition, such as a person whose ideas or research has been allegedly misappropriated by a faculty member.

I. Permissive nonparty participant: any person who has a substantial interest that will be affected by the outcome of a Comprehensive Adjudication and whose request to participate in the proceeding has been granted by the Hearing Officer, pursuant to the provisions of section 28-51.B.

J. Faculty member: any person who meets the definition of faculty member as set forth in section 21-31 and would be eligible to invoke the adjudication procedures of this chapter for resolution of a grievance described in section 28-32.B.

COMMENT: Because so many new terms are used in the revisions, the Council thought it would be helpful to put a Definitions section in the beginning. The definitions include cross-references to other sections of the Code so that the reader could refer back to this section if he or she wanted to find the Code sections relevant to a particular defined term.

SECTION 28-32

CASES SUBJECT TO ADJUDICATIONS

A. If the Human Rights Office, a Dean or any other authorized administrative official files with the Provost a written report that claims reasonable cause exists to adjudicate charges of wrongdoing brought against a faculty member, the Provost shall determine whether such reasonable cause

exists. If the Provost believes such reasonable cause exists, then, before taking any disciplinary or punitive action against such faculty member, the Provost shall initiate an adjudication for resolution of such charges by filing a petition in the time and manner specified below.

B. A faculty member may initiate an adjudication under this chapter by filing a petition for adjudication in the time and manner specified below, for resolution of a dispute which falls within one or more of the following categories:

1. Cases in which it is alleged that an authorized university official, through action or inaction, has violated university regulations thereby affecting the terms, conditions, or course of employment of the petitioning faculty member. Examples of such cases include, but are not limited to, allegations that university regulations were violated in the denial of tenure or promotion or in the process of program elimination.

2. Cases where the right to an adjudication is specifically granted to a faculty member under another section of the Faculty Code.

3. Cases in which the petitioning faculty member alleges an injustice resulting from decisions, actions, or inactions of any persons acting on behalf of the University in an administrative capacity and affecting the terms, conditions, or course of employment of the faculty member by the University. In cases involving denial of tenure or promotion, program elimination or discriminatory salary reduction, decisions relating to merit or quality of the faculty member can be reviewed only to the extent necessary to determine whether the decision being questioned was affected by factors other than the relevant and permissible considerations in making the particular decision being challenged. Such relevant and permissible considerations are set forth in sections of the Faculty Code Chapters addressing appointment, promotion and tenure of

Faculty Members, including but not limited to Sections 24-32, 24-33, 24-34, 24-35 and 25-32, as amended.

For purposes of this section, "injustice" shall include, but is not limited to: (1) any action taken that was based at least in part on a legally impermissible reason or on any other reason that was unfair in light of the decision being made; and (2) any action that was not supported by an articulated reason that can be shown to be fair and relevant to the circumstances.

COMMENT: Section A reflects a major change in the Code: Under the existing code (section 25-71), a Dean or other appropriate administrator investigates alleged wrongdoing and determines what action should be taken against the faculty member before the faculty member is given an opportunity to defend himself or herself. Only when the faculty member has been notified of the action that the Dean intends to take against him or her is the faculty member given a right to request an adjudication of this decision and put up a defense. The Council concluded that this method of proceeding is fundamentally unfair to the faculty member in that it builds a presumptive case against the faculty member before the faculty member has been given an opportunity to present his or her side of the story. This method of proceeding puts the faculty member at a significant disadvantage. Under the proposal, an adjudication is now required before any significant disciplinary action can be taken against a faculty member has been decided upon. The proposal contemplates that initiative will first be taken by a Dean or other appropriate administrator to do a preliminary investigation. If, as a result of that investigation, it is concluded that there is reasonable cause to have an adjudication, this conclusion is communicated to the Provost. (See proposed changes to section 25-71.) The section Thus, section A requires the Provost to make an initial separate determination of whether a report recommending disciplinary action should be pursued. If she determines that it should be pursued, then she initiates an adjudication. Other sections of the Code also require revision in order to effectuate this change. The mechanism by which a Dean or other appropriate administrator initiates a preliminary investigation of alleged wrongdoing is contained not in chapter 28, but in section 25-71. The proposal includes proposed changes in that section so as to coordinate with the changes proposed for this section.

Section B. expands and clarifies the situations where a faculty member can initiate an adjudication. Under the existing Code (section 28-31.C.-E.), a faculty member is given three general bases on which to appeal. Under existing subsection

C., a faculty member who challenges a decision denying reappointment (including denial of tenure) or a decision to reduce salary upon reappointment, must show that a specific rule was violated or unlawful discrimination has occurred in order to challenge a decision denying or revoking tenure or eliminating a program. Under existing subsection D., a faculty member may challenge removal for reason of program elimination if the faculty member can show that the procedures spelled out elsewhere in the code were not followed, or that he/she was the victim of unlawful discrimination, or that he/she was not a member of the program being eliminated, or that removal was not reasonable. Finally, under existing subsection E., a faculty member may challenge an administrative action or inaction affecting his/her terms and conditions of employment if it involves an injustice, but only if the action or inaction does not arise under one of the previous subsections. The proposal rewrites, simplifies, and broadens the bases on which a faculty member may challenge administrative action. It would allow a faculty member to challenge any action or inaction affecting the faculty member's terms and conditions of employment in which a university regulation has been violated or in which the faculty member alleges an injustice has occurred. The Council decided to allow a faculty member to request a hearing for any alleged injustice. The Council proposal does not allow the issue of merit to be revisited in the case of tenure denial, however, because merit is more properly addressed in the tenure process. The merit issue review is therefore limited in Chapter 28 adjudications to a review as to whether there were impermissible factors considered. In cases where there are other sections in the code that empower a faculty member to challenge administrative action, those rights are also incorporated here by reference. The reasons that the Council chose the course of a broader category of cases are: (1) it would avoid the initial arguments as to whether a faculty member was entitled to a hearing; (2) the existing Code deprives faculty members of the right to a hearing in cases where there was unfairness in a tenure decision (such as personal grudges) but the faculty member could not show a rule violation or unlawful discrimination; and (3) the potential for a flood of cases resulting from a broader hearing right was outweighed by the advantages of making hearings more accessible and the fact that the Panel has the authority to dispose of frivolous cases.

SECTION 28-33

ADJUDICATION PANEL AND HEARING PANELS

A. Brief Adjudications shall be heard by a Hearing Officer who has been appointed under the procedures specified

