

ADJUDICATIVE PROCEEDINGS FOR
THE RESOLUTION OF DIFFERENCES

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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.....	4
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	6
A. Brief Adjudications.....	6
B. Adjudication Panel.....	6
C. Hearings Officers.....	7
D. Selection of Student/Staff members.....	7
E. Size of Hearing Panels.....	8
F. Choosing Members of Hearing Panels.....	8
G. Role of Hearing Officer.....	10
H. Role of other Panel Members.....	11
I. Alternate Members.....	11
SECTION 28-34. BURDEN AND STANDARD OF PROOF	11
SECTION 28-35. TIME LIMITATIONS ON INITIATING ADJUDICATIONS	11
A. Provost Initiated Adjudications.....	11
B. Faculty Initiated Adjudications.....	12
C. Conciliation.....	12
D. Untimely Filing.....	13
SECTION 28-36. MANNER OF INITIATING ADJUDICATIONS	14
A. Filing Notices of Request with Faculty Secretary.....	14
B. Response by Party against whom Relief is Sought	15

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C.	Action by Chairperson of Adjudication Panel.....	16
D.	Emergency Suspension.....	17
SECTION 28-37. DISQUALIFICATION OF HEARING PANEL MEMBERS		17
A.	Causes for Disqualification.....	17
B.	Challenges for Cause.....	18
C.	Disqualification for Lack of Availability.....	19
D.	Appointment of Alternate.....	19
SECTION 28-41. BRIEF ADJUDICATIONS		19
A.	Determination to use Brief Adjudication.....	19
B.	Limitations on the use of Brief Adjudication...	21
C.	Procedure.....	22
D.	Conversion of Brief Adjudication to Comprehensive Adjudication.....	23
E.	Written Decision.....	24
F.	Record.....	24
SECTION 28-51. COMPREHENSIVE ADJUDICATIONS - NONPARTY PARTICIPANTS		25
A.	Permissive Nonparty Participants.....	25
B.	Nonparty Participant Rights.....	26
SECTION 28-52. COMPREHENSIVE ADJUDICATIONS - PRELIMINARY PROCEEDINGS		29
A.	Panel Preliminary Review.....	29
B.	Notice of Prehearing Conference.....	29
C.	Determination of Open or Closed Hearing.....	29
D.	Right to Counsel.....	30
E.	Prehearing Conference Procedure.....	30
F.	Summary Disposition.....	31
G.	Prehearing Order.....	32
H.	Amendments to Prehearing Order.....	33
I.	Collection of Evidence.....	33
J.	Recording of Meetings or Conferences.....	35
K.	Discovery Orders.....	35
SECTION 28-53. COMPREHENSIVE ADJUDICATION - PROCEDURE AT HEARING		35
A.	Persons Entitled to be Present.....	35
B.	Recording of Proceedings.....	36
C.	Evidence.....	36
D.	Course of Hearing.....	38
E.	Panel Discretion re: Evidence Presented.....	38
F.	Witnesses.....	38
G.	Adjournment of Proceedings.....	38

SECTION 28-54. COMPREHENSIVE ADJUDICATION - DECISION	39
A. Time Period.....	39
B. Content.....	39
C. Delivery.....	40
SECTION 28-61 REVIEW PROCEDURES	40
A. Brief Adjudication Decisions.....	40
B. Decisions of Comprehensive Adjudication.....	41
C. Review of Decisions Where President is a Party	42

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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 ~~the conciliatory process~~. 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 hearing process which uses a Hearing Officer as well as a faculty panel, or in some cases, a faculty/student or staff panel. All

results of these hearings are ultimately appealable to the President, unless the President was a party to the controversy, in which case it would be appealable to the ~~President of the~~ Board of Regents. Subject to the provisions of RCW ch. 34.05 relating to exhaustion 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 decisionmaker, subject to review of a panel of faculty. The Hearing Officers' qualifications and appointment procedure are specified in section 28-33.C below.

E. Hearing Panel: a group of three to five members of the Adjudication Panel and in some cases, two students or staff members, who hear and rule on comprehensive hearings. 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. below.

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 a hearing and the person or persons whose actions or failure to act are identified in the petition as having given rise to the grievance. ~~that the petition requests to be resolved by hearing.~~

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 hearing and whose petition 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 24 - and would be eligible to invoke the adjudication procedures of this chapter for resolution of a grievance described in section 28-32.B. below.

SECTION 28-32. CASES SUBJECT TO ADJUDICATIONS

A. Upon receipt of a written report from the Human Rights Office, a Dean or any other authorized administrative official, 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.

B. A faculty member may initiate an adjudication under this chapter by filing a petition for adjudication within the time limits 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 a faculty member of the university. 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 a 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, the Hearing Officer or Panel shall have the authority to review decisions relating to merit or quality of the faculty member only insofar as such review is necessary to determine whether the decision being questioned was affected by factors other than those factors specified elsewhere in the Faculty Code as being 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.

SECTION 28-33. ADJUDICATION PANEL AND HEARING PANELS

A. Brief ~~Adjudications~~ ~~adjudicatory proceedings~~ shall be heard by a Hearing Officer who has been appointed under the procedures specified below. Every other adjudication under this Chapter shall be heard by a Hearing Panel, which has been appointed by the Chair of the Adjudication Panel under the procedures specified below.

B. Faculty members of a Hearing Panel shall be selected from the Adjudication Panel, which shall be a standing committee consisting of 24 members of the faculty, three from each Senate group as nominated by the Senate Executive Committee and approved by the Faculty Senate. During the selection and appointment process for the Adjudication Panel, careful attention shall be given to the commitment of the university to

affirmative action and to the necessity of diversity in the decision making body in order to arrive at fair decisions. The Chairperson of the Adjudication Panel shall be nominated annually by the Senate executive committee from among the 24 Adjudication Panel members and be approved by the Senate. No department chairperson, school director, associate dean or dean shall serve on the panel. Adjudication Panel members shall serve 3-year terms. Adjudication Panel members and the Chair of the Adjudication Panel are eligible for reappointment except that in the event a Panel member has served two consecutive terms such member shall be ineligible for reappointment for a period of three years.

C. At least three Hearing Officers shall be appointed jointly by the President and the Chair of the Faculty Senate. The terms and conditions of a Hearing Officer's appointment shall be determined jointly by the President and the Chair of the Faculty Senate. All such Hearing Officers must be attorneys admitted to the practice of law in at least one United States jurisdiction and shall have knowledge of hearings procedures and university and faculty matters. No department chairperson, school director, associate dean or dean shall serve as Hearing Officer.

D. For procedures requiring student members of a Hearing Panel, the student members shall be selected pursuant to procedures established by the ASUW (if the aggrieved student is an

