

MEMORANDUM

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

Date: April 21, 1994
From: Tom Andrews *Tom Andrews*
To: Faculty Senate
Subject: Proposed Resolution on a Faculty Legal Defense Fund

The Washington State Administrative Procedures Act ("APA") requires that where a state agency sets up a process for hearing disputes, the parties shall have a right to be represented by counsel, at the party's own expense. The proposed revisions of Chapter 28 reflect this requirement of state law at section 28-52.G. But as we all know, lawyers are expensive, and there is a widespread desire to reduce this potential cost if the faculty will not be prejudiced thereby. The proposed revisions go some way towards this goal by providing that: "Normally, if the faculty member chooses not to be represented by counsel at proceedings before the Hearing Panel and/or Hearing Officer, the administration will not be so represented, except in cases where the faculty member is an attorney." Section 28.52.G.("Administration Waiver") This language, although similar to the language in the existing code,¹ was something of a compromise by the administration which was nervous about waiving rights now set out clearly in the APA.

At the last Faculty Senate meeting, a concern was expressed that the proposed revisions allow for the possibility that a "non party participant" might be represented by counsel at a hearing, even if the faculty (and Administration) had waived their rights to be represented. While allowing such non party participant representation by counsel at the hearing would only be in the Hearing Panel's discretion under the proposed revision, there seems to be a fear that the discretion might be exercised in favor of allowing such representation despite waivers of counsel by the parties. For that reason, I have joined in a separate proposal that would deny

¹This provision is similar to one contained in the present Chapter 28, but in the present code the administration purports to waive its right to be represented by counsel any time that the faculty member waives that right. The Attorney General has advised the President that a blanket waiver would not be legal. In any event, it is questionable whether the President could ever waive legal representation for administrators who are parties in a dispute with a faculty member.

*Special Collections
UW President's Records
Accession No. 05-006
Box 4*

