

## FACULTY

# SENATE

### Adjudication considered

At its meeting on Jan 17, the Faculty Senate began its consideration of a proposed new chapter of the faculty code dealing with adjudication proceedings for the resolution of differences.

Most of the provisions of the current Chapter 28 were adopted in May, 1985, and have been used to adjudicate differences arising from such matters as salary inequities, promotion and tenure denials, non-renewal of research professorships, denials of summer school teaching or consulting opportunities, discrimination and sexual harassment.

For some years the procedures specified in the current code worked reasonably well, but several recent events convinced many faculty and administrators of the need for significant changes:

- The state legislature passed the Administrative Procedures Act in 1988 which defines adjudication rights and procedures. A number of these new procedures are in conflict with the Faculty Code. Thus, decisions reached under this chapter of the Faculty Code are potentially reversible in state court.
- Under the existing code a dean may take disciplinary action against a faculty member (including revocation of tenure) before the faculty member has had an opportunity to respond to the accusations at a hearing.
- Adjudication cases frequently took more than a calendar year to reach resolution, a delay which heightened the frustration of all the parties.
- Some especially visible discrimination and harassment cases highlighted the fact that the current code excluded alleged victims from the proceedings, creating strong perceptions of unfairness.

After extensive faculty discussion and a thorough investigation by a subcommittee of the Faculty Council on Faculty Affairs, or FCFA, and by a faculty-administration task force, the responsibility of redrafting Chapter 28 was assigned to the FCFA. The administration agreed to fund an independent attorney who specializes in administrative law to assist the FCFA in drafting the new provisions, and the council began its work in earnest during the summer of 1992.

Under the leadership of Law School Professor Tom Andrews, the FCFA dedicated virtually all of its resources to this project during 1992-93. Advice was solicited and testimony taken from a wide range of

campus constituencies, including the ASUW and GPSS, Adjudication Panel Chair Professor Bonnie Worthington-Roberts, representatives of the Special Faculty Committees on Minority Faculty Affairs and Faculty Women, past parties to adjudications, Law School faculty, representatives of the professional staff and others.

In Spring, 1993, the FCFA submitted the 62-page fruits of its labor to the Faculty Senate Executive Committee. As that body discussed the proposed new Chapter 28, it became apparent that most of the provisions it contained were noncontroversial. There was no disagreement, for example, with the provision that disciplinary action against a faculty member cannot be taken until after the opportunity for a hearing. Senate Executive Committee members also agreed that a Brief Adjudication Procedure should be available for resolving minor disputes, that the university should employ hearing officers to handle the administrative responsibilities of comprehensive adjudications, and that appropriate changes had been made to bring the chapter in compliance with the Administrative Procedures Act.

At the same time, it became clear that there were a handful of issues that prompted considerable discussion. Some of these generated amendments passed by the Senate Executive Committee. For example, the SEC passed amendments reaffirming the present provision that an administrator will not be represented by counsel at a hearing unless a faculty member chooses to retain an attorney, creating a faculty advisory body to review charges initiated by the Office of Human Rights and requiring that the president remand a decision back to the hearing panel before reversing it.

Other provisions questioned by some members of the Senate Executive Committee remain in the version now being discussed in the Senate. For example, the current proposal includes the provision that awards nonparty participant status to alleged victims. It also specifies that there may be a minority of staff or student members on hearing panels in certain discrimination cases, and maintains the standard of proof as "preponderance of the evidence," rather than the higher, "clear and convincing" standard.

These remaining issues began to be discussed during the first Faculty Senate meeting dedicated to consideration of the proposed Chapter 28. The Senate leadership expects this discussion to continue until the Senate is ready to return the document to the SEC. Then it will come back to the Senate for a second reading, after which it will be submitted to the entire faculty for discussion and vote. It is anticipated that this vote will occur before the end of the 1993-94 academic year. □

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