GENERAL LEGISLATIVE ACTION

At its meeting on December 3, 2015, the Faculty Senate approved legislation that would amend the Faculty Code related to dispute resolution. These changes have been approved at every step of the legislative process. The Faculty Council on Faculty Affairs has developed and approved this legislation.

Please vote by December 28, 2015.

Rationale

The Secretary of the Faculty and the University Ombud identified several updates needed in the existing Faculty Code language to reflect current requirements and procedures regarding communication between their offices during Conciliatory Proceedings (Chapter 27). In addition to minor reorganization of content and editorial changes to increase clarity of the chapter, the following amendments clarify annual reporting requirements for the University Ombud and shift the responsibility of tracking conciliation time limits from the Secretary of the Faculty to the Ombud to reflect actual practice. Lastly, for the purposes of adjudication time limits in Chapter 28, the Ombud would be required to notify the Secretary of the Faculty of the conclusion of a conciliation in addition to the currently required notification of the assignment of a conciliation officer to a case.

Over the past year, the Secretary of the Faculty worked with members of the President’s and Provost’s offices, members and the chair of the Adjudication, the UW Attorney General’s Office, and the University Ombud to identify updates needed in the existing language in Chapter 28 of the Faculty Code to fill gaps in processes, add clarity, and to reflect current requirements and procedures. Specific rationale is provided with each modified section.

Counter Argument to Proposals

One proposed modification was questioned during discussions of the proposed legislation. Some individuals objected to the provision in Section 28-33.B. that would allow, in the extraordinary event that neither a chair and/or vice-chair cannot be identified from among the faculty, a hearing officer may be temporarily appointed in the same manner to serve as Adjudication Panel Chair.

Proposed Amendments to the Faculty Code:
(Additions are underlined; deletions are struck through)

University of Washington
Faculty Code and Governance
Faculty Code Chapter 27

Administrative and Conciliatory Proceedings for the Resolution of Differences

This chapter describes the informal proceedings available for the resolution of differences as described in Chapter 25, Section 25-62. The proceedings set forth in this chapter are permissive, not mandatory voluntary. A faculty member may instead initiate a request for adjudicative proceedings, keeping in mind the time limits of Chapter 28, Section 28-35. Should the faculty member choose to engage in administrative and/or conciliatory proceedings prior to seeking adjudication, time limits provided in Chapter 28, Section 28-35 shall be extended for the period required for completion of such proceedings. Administrative and conciliatory proceedings are always available, with no time limits.
Section 27-31 Administrative Proceedings

The faculty member may first discuss the issue about which he or she is concerned with the appropriate department chair and, if the faculty member so wishes, the academic dean. The matter may be concluded by mutual consent at this point.

Section 27-41 Conciliatory Proceedings—Conciliation Officers and Conciliation Board

If the process of resolution by mutual consent under Section 27-31 does not take place or fails, the faculty member or the dean may request the assistance of a conciliation officer as a neutral third party by applying to the University Ombud for the assignment of a conciliation officer. Conciliatory proceedings aim at resolving problems by informal means without resorting to the more formal adjudicative proceedings provided in Chapter 28.

A. Conciliation Officer Eligibility

Conciliation officers shall be tenured members of the faculty, associate and full professors without tenure for reasons of funding, or emeritus faculty who are familiar with procedures and opportunities for the resolution of disputes or complaints involving faculty members.

B. Conciliation Officer Numbers and Terms

There shall be no fewer than six conciliation officers who shall serve three-year terms.

C. Conciliation Officer Selection

Conciliation officers shall be selected by the President from a list of names exceeding the number of positions to be filled, prepared, and approved by the Senate Executive Committee. Vacancies for the remainder of unexpired terms shall be filled according to this same procedure. Conciliation officers may be reappointed to successive terms by mutual consent of the President and the Senate Executive Committee.

D. Conciliation Officer Removal

Any conciliation officer may be removed during his or her term of office by concurrent decision of the President and the Senate Executive Committee.

E. Attachment to University Ombud

Conciliation officers shall be attached to the Office of the University Ombud but shall be limited in their activity to disagreements arising among faculty members or between individual faculty members and the University administration.

F. Conciliation Board

In attempts to achieve conciliation of differences (Section 27-41), the conciliation officer assigned to a case shall have the assistance and advice of a Conciliation Board, consisting of the University Ombud and the other conciliation officers. The Conciliation Board shall:

1. Advise or assist the conciliation officer, at his or her request, on conciliation efforts in which he or she is engaged; and

2. Report annually to the President, the Secretary of the Faculty, and the Senate Executive Committee the number of conciliations, if voluntary disposition was or was not achieved, and any as to observed patterns of disputes which have occurred, together with any recommendations to be studied by the appropriate faculty council for legislative consideration.

G. Conciliation Officer Assignment

The University Ombud, who may consult with the other members of the Conciliation Board (Section 27-42), shall determine which conciliation officer shall be assigned to a case, and shall inform the Secretary of the Faculty of appointments made. No conciliation officer shall be assigned to a case arising within his or her own school or college.
Section 27-42—Conciliation Board—Conciliatory Proceedings

**BA. Investigation by Conciliation Officer**

The assigned conciliation officer is authorized to investigate the matter, to examine and collect documents and other information, and to discuss the issues with both sides with a view to achieving a mutually agreeable resolution. In discussions with the conciliation officers, only the parties may participate.

**CB. Conciliation Officer as Intermediary**

The assigned conciliation officer shall act as an intermediary. Although free to advise and assist the parties to the dispute in analyzing the situation and in crystallizing the issues, the officer does not serve as a representative or counsel for any party.

**DC. Privileged and Confidential Proceedings**

Statements and information divulged in the course of the conciliatory proceedings shall be privileged and confidential. They may be shared by the conciliation officer only in the course of consultation with the University Ombud and the Conciliation Board. They shall not be used for impeachment purposes nor shall they be discoverable or subject to subpoena or disclosed to anyone else, including the Hearing Committee conducting a subsequent adjudicative hearing, or the other parties involved, or in any other adjudicative or judicial proceeding, without the written permission of the individual who divulged the original information. All materials shall be returned to the appropriate parties at the conclusion of the conciliatory proceedings.

**ED. Concluding Conciliatory Proceedings**

Either party may decide to end conciliatory proceedings at any time. Ordinarily, the conciliation effort shall conclude within 60 days of the request for conciliation. The Secretary of the Faculty University Ombud shall keep the parties informed of these time limits. Upon completion or breaking off of the proceedings, the conciliation officer shall take one of two possible actions:

1. If a voluntary disposition was achieved, its results and terms shall, in writing, be given in writing, by the officer to the parties to the conciliation and filed with the University Ombud and the Secretary of the Faculty.

2. If a voluntary disposition was not achieved, the officer shall, in writing, notify the parties and the University Ombud that the conciliatory proceedings have ended and that adjudicative proceedings may be available, as described in Chapter 28. The faculty member may seek advice from the Secretary of the Faculty or the University Ombud about these procedures.

**FE. University Ombud Report to the Secretary of the Faculty**

At the termination of a conciliation proceeding, the conciliation officer University Ombud shall promptly report to the Conciliation Board Secretary of the Faculty the date of termination of the proceeding, the general nature of the dispute and whether a mutually agreeable resolution was or was not achieved.

Section 27-42—Conciliation Board

**A.** In attempts to achieve conciliation of differences (Section 27-41), the conciliation officer assigned to a case shall have the assistance and advice of a Conciliation Board, consisting of the University Ombud and the other conciliation officers.

**B.** The Conciliation Board shall:

1. Advise or assist the conciliation officer, at his or her request, on conciliation efforts in which he or she is engaged; and

2. Report annually to the President and the Senate Executive Committee as to observed patterns of disputes which have occurred, together with any recommendations to be studied by the appropriate faculty council for legislative consideration.
Adjudicative Proceedings for the Resolution of Differences

This chapter sets forth the adjudicative procedures to be used in resolving 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 Office of the University Ombud. The parties are strongly encouraged to use those procedures and other informal mediation procedures whenever possible.

The adjudicative procedures set forth in this chapter comply with the requirements of the Washington Administrative Procedure Act (Chapter 34.05 RCW) 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 brief adjudications are appealable only if the Brief Adjudication Review Panel reverses or amends the decision of the hearing officer. Results of brief or comprehensive adjudications in which the President is a party to the controversy are appealable to the Board of Regents. Results of adjudications in which the President is not a party to the controversy are appealable to the President. Subject to the provisions of Chapter 34.05 RCW 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** is the standing committee of faculty members, students and staff selected pursuant to Section 28-33, Subsection B. Members of any hearing panel or other decision making group for a specific case are selected from the Adjudication Panel.

B. **Brief adjudication** is 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** is 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** is an attorney appointed by the Chair of the Faculty Senate and the President, who performs the following functions:
   1. For comprehensive adjudications, he or she coordinates the comprehensive adjudication but generally 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 by a panel of faculty.
   3. **May be appointed to serve as the Adjudication Panel Chair under Section 28-33 B.**

   The hearing officer's qualifications and appointment procedure are specified in Section 28-33, Subsection C.

E. **Hearing panel** is a group consisting of members of the Adjudication Panel 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, Subsections D and E. When used alone, the term "panel" refers to a hearing panel.
F. **Day** is 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. If the time period specified is less than five days, then “day” shall include only business days.

G. **Party** is 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. The term "party" as used herein does not include nonparty participants and does not include persons, such as a dean or the University Complaint Investigation and Resolution Office (UCIRO), who refer a matter to the Provost for possible action pursuant to Section 28-32, Subsection A.

H. **Administrative party of right** is a person, not identified in the petition, who, for good and valid reason, is a necessary party by virtue of being immediately superior in administrative rank to a respondent (for example, the dean of a school or college in which a department chair is a respondent) and whose request to participate in the proceeding has been granted by the hearing officer. The administrative party of right shall participate as a respondent to the petition and shall have the same rights and be subject to the same responsibilities as a party.

I. **Nonparty participant of right** is 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 allegedly has been misappropriated by a faculty member.

J. **Permissive nonparty participant** is 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, Subsection A.

K. **Nonparty participant**, where not specified, applies both to nonparty participants of right and to permissive nonparty participants.

L. **Faculty member** is any person who, at the time of the decision, action or inaction being contested, meets the definition of faculty member as set forth in Chapter 21, 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, Subsection B.

M. **Petition** is the document filed by the person requesting an adjudication, in order to begin the adjudication. The contents of the petition and the manner of filing are specified in Section 28-36.

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N. **The Record** of an adjudication or dispositive decision by the Chair of the Adjudication Panel or intermediate panels described below shall consist of only the following:

1. The notice and petition filed by the party initiating the adjudication, all responses filed by other parties, and decisions and appointments of panels and hearing officers by the Chair;

2. Evidence received or considered;

3. All written statements submitted by persons and parties; all written records of oral communication prepared by the hearing officer and circulated to the parties and all amendments thereto that have been submitted;

4. The transcript or recording of any hearing held during the course of the adjudication; and

5. In a Brief Adjudication, the record shall also include (a) all written records of oral communication prepared by the hearing officer and circulated to the parties pursuant to Section 28-41, Subsection C. below, and all amendments thereto that have been submitted, (b) any other document regarding the matter that was considered or prepared by the Brief Adjudication Panel, or by the hearing officer or by the Brief Adjudication Review Panel during review of the hearing officer's decision, and (c) when applicable, the Adjudication Summary prepared by the Chair of the Adjudication Panel.

6. The record shall not consist of deliberations referenced in Section 28-82.
Section 28-32 Cases Subject to Adjudications

A. Determining Reasonable Cause

If the University Complaint Investigation and Resolution Office (UCIRO), a dean or any other authorized administrative official files with the Provost a written report that claims reasonable causes exist to adjudicate charges that a faculty member has violated University regulations or state or federal laws pertaining to the faculty member's performance of his or her duties, the Provost shall determine whether such reasonable cause exists. If the report is filed by the UCIRO, the Provost shall first appoint a special committee of three faculty members who are not involved in the matter being considered and who are members of the Adjudication Panel. No member of this special committee shall subsequently serve on any panel hearing or review any adjudication arising out of or related to the matters set forth in the report. Based solely on the written record of the investigation, the special committee shall assist and advise the Provost in his or her evaluation of whether 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. Initiating an Adjudication

A faculty member may initiate an adjudication under this chapter by filing a petition for adjudication within the time limitations specified in Section 28-35 and in the 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 Chapter 24, Sections 24-32, 24-33, 24-34, 24-35 and Chapter 25, Section 25-32, as amended.

For purposes of this section, "injustice" shall include, but is not limited to:

A. 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

B. 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

RATIONALE. Changes in this section include:

1. Restricting appointments to the Adjudication Panel to voting or emeritus faculty. Non-voting faculty may not have the institutional experience or scheduling availability to serve on panels. Emeritus faculty have been voting faculty in good standing at the time of retirement and may lend valuable perspectives to the panel. There is no history of non-voting faculty ever being appointed to the adjudication panel, and some members retire during their term and are willing to complete their terms while on emeritus status. As is currently the case, all members nominated by the SEC must be confirmed by the Senate.

2. Appointing staff or student members to the Adjudication Panel only when a case involving a student or staff member is filed. There is no record of any adjudications proceeding with student or staff in recent memory, so
requiring regular appointment of these members is an unnecessary use of time and resources. In the case
where such appointments are appropriate, the process remains the same.
3. Allowing the appointment of a Vice-chair of the Adjudication Panel. This person would be able to serve in the
place of the Chair in the chair’s absence or conflict of interest. Allows for appointment of hearing officer as chair
of Adjudication Panel if no faculty member can be identified to serve.
4. Restricts hearing officers to attorneys who are not members of the UW faculty. There is no record of current
employees of the University faculty or staff having been appointed as hearing officers and explicitly restricting
the appointment to individuals external to the UW limits potential conflicts of interest.
5. Reduces the typical size of the hearing panel from 5 members to 3. Scheduling hearings with five members is
often challenging and prolongs the adjudication process. At the request of one of the parties, the size of the
panel can be expanded to five.

A. The Hearing Officer

Brief adjudications 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 officer and a hearing panel,
appointed by the Chair of the Adjudication Panel under the procedures specified below.

B. The Adjudication Panel

The Adjudication Panel shall be a standing committee consisting of:

1. At least 24 members of the faculty, selected broadly from the colleges, schools, and campuses, nominated
   by the Senate Executive Committee and approved by the Faculty Senate. Eligible members shall be limited
to voting faculty and emeritus faculty who were voting faculty at the time of retirement. Faculty members of
hearing panels for specific cases are selected from the Adjudication Panel. Students, staff members, and
non-faculty academic personnel may serve on a hearing panel on a case by case basis if called to serve
under the provisions of Subsection D, below.

2. At least six student members selected by the ASUW and the GPSS, under procedures established by the
   ASUW and the GPSS in cooperation with the Chair of the Faculty Senate, and approved by the Faculty
   Senate (see Class C Resolution at the end of Chapter 28 [Footnote]);

3. At least six staff members selected by the University Office of Staff Personnel, under procedures
   established by that office in cooperation with the various organizations representing University employees,
   and approved by the Faculty Senate. Faculty, student, and staff members of hearing panels for specific
cases are selected from the Adjudication Panel.

During the selection and appointment process for the Adjudication Panel, the commitment of the University to
affirmative action and the necessity of diversity in the decision making body shall be adhered to. The Chair of
the Adjudication Panel shall be nominated annually by the Senate Executive Committee from among the
Adjudication Panel faculty members and shall be approved by the Senate. No department chair, school
director, assistant dean, associate dean, dean, vice chancellor, or chancellor shall serve on the Adjudication
Panel. Faculty and staff Adjudication Panel members shall serve three-year terms. Student Adjudication Panel
members shall serve one-year terms. Adjudication Panel members and the Chair of the Adjudication Panel are
eligible for reappointment except that in the event that a panel member has served two consecutive terms, then
such a member shall be ineligible for reappointment for a period of three years. A chair and vice-chair of the
Adjudication Panel shall be nominated annually by the Senate Executive Committee from among the
Adjudication Panel faculty members and shall be approved by the Senate. In the extraordinary event that
neither a chair and/or vice-chair cannot be identified from among the faculty, a hearing officer may be
temporarily appointed in the same manner to serve as Adjudication Panel Chair.

C. Hearing Officer Appointments

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 University of Washington employee department chair, school director, associate dean, or dean
shall serve as a hearing officer.
D. **Nonparty Participant of Right**

All comprehensive adjudications involving a non-party participant of right who is either a student, staff member, or non-faculty academic personnel, shall be heard by a hearing officer and, unless waived by all of the parties, a hearing panel composed of:

1. Two student members of the Adjudication Panel (in a case involving allegations by a student) or two staff members of the Adjudication Panel (in a case involving allegations by a staff member), and

2.1. Five faculty members or, upon the request of one party, with the unanimous consent of the parties, three faculty members of the Adjudication Panel and.

2. In a case involving arising from allegations by a student, two student members, who shall be appointed from a list of at least six eligible students selected by the ASUW and the GPSS, under procedures established by the ASUW and the GPSS, and approved by the Faculty Senate Chair, or

3. In a case involving arising from allegations by a staff member or non-faculty academic personnel, two staff members from the relevant constituency, who shall be appointed from a list of at least six eligible candidates, nominated by the Secretary of the Faculty, in consultation with the campus organization(s) most closely representing the constituency of the non-party participant, and approved by the Faculty Senate Chair.

E. **Number of Hearing Panel Faculty Members**

All other adjudications shall be heard by a hearing officer and a hearing panel of five faculty members, except that upon the request of at least one of the parties, the hearing panel may be reduced increased to three faculty members, or with the unanimous consent of the parties the hearing panel may be waived.

F. **Role of Hearing Officer**

The role of the hearing officer serving with a hearing panel on a comprehensive adjudication shall be that of administrative coordinator. The hearing officer shall not have a vote on the final decision of the panel or on interim decisions of the panel while the adjudication is pending, except as specifically noted below. The hearing officer shall be responsible for communications between the parties and the panel while the adjudication is pending and shall be responsible for conducting the adjudication in compliance with the *Faculty Code* and any applicable law. All actions other than the final decision that are to be taken by the panel under this chapter may be taken by the hearing officer if so directed by the panel. The hearing officer shall make all legal rulings, as specified below, but any such rulings, including procedural decisions and interpretations of the *Faculty Code* or applicable law, are subject to revision or reversal by the hearing panel.

G. **Diversity and Impartiality of Hearing Panel**

In selecting members of a particular hearing panel, the Chair of the Adjudication Panel shall attempt to achieve the highest degree of diversity and impartiality and make every possible effort to select panel members with differing backgrounds that the chair deems relevant to the issues at hand and the persons involved. This requirement is especially important to observe in cases where unlawful discrimination is alleged. The purposes of this provision are to broaden the perspective of the panel, and increase the panel's ability to understand the motivations of the persons involved.

H. **Role of Hearing Panel Members**

The role of any member of a hearing panel, including students or staff, or non-faculty academic personnel who may serve on a panel, shall be that of an impartial fact finder and judge and shall not be that of an advocate for any of the parties to the adjudication.

I. **Hearing Panels Meeting During Summer**

Hearing panels may, but are not required to, meet during the period of June 16 through September 15.

**Section 28-34  Burden and Standard of Proof**

The burden of proof with respect to claims made in the petition that commences an adjudication under this chapter is on the party filing the petition. The burden of proof with respect to any counter claims made by a party in a
responsive pleading is on that party. The applicable standard of proof for all adjudications under this chapter shall be the preponderance of the evidence.

Section 28-35 Time Limitations on Initiating Adjudications

A. Initiation of an Adjudication by the Provost

In order for the Provost to initiate an adjudication pursuant to Section 28-32, Subsection A, the Provost shall file a Notice of Request for Adjudication and a petition in the form and manner specified in Section 28-36 within 30 days after receipt by the Provost of the written report alleging that reasonable cause exists to adjudicate charges against a faculty member; provided that in cases where the report was filed with the Provost by the University Complaint Investigation and Resolution Office (UCIRO), the Provost shall file the Notice of Request for Adjudication and petition within 45 days after receipt by the Provost of such report.

B. Initiation of an Adjudication by a Faculty Member

In order for a faculty member to initiate an adjudication pursuant to Section 28-32, Subsection B, the faculty member shall file a Notice of Request for Adjudication and a petition in the form and manner specified in Section 28-36 and within:

1. Ninety days after the faculty member has received notice of the action, decision or inaction that gives rise to the faculty member's right to an adjudication under Section 28-32, Subsection B; or

2. Ninety days after the faculty member has discovered or reasonably should have discovered the action, decision or inaction or the underlying facts regarding such action, decision or inaction that gave rise to the faculty member's right to adjudication, if later than Subsection B.1. Notwithstanding the foregoing, the time periods specified in Subsection B.1 and this subsection shall be suspended during the period of June 16 through September 15 if the faculty member's contract does not include such period.

RATIONALE: TIME LIMITS ON FILING ADJUDICATIONS. The change in C. (below) clarifies that time limits are suspended for informal dispute resolution for which specific records of initiation and termination dates are kept and thus can be documented. Informal discussions among parties or with the Ombud, where the start and end dates are not documented, would not be included in the mandatory suspension of the time limits, although the parties retain the right (described in D, below) to specifically argue that time limits be suspended on the grounds of a gross injustice. Adding the term “specifically” to D. clarifies that the burden to argue a gross injustice rests with the party bringing the adjudication.

C. Initiation of an Adjudication Following Informal Dispute Resolution

Notwithstanding Subsections A and B of this section, if the parties choose to engage first in informal dispute resolution proceedings activities, such as mediation or the conciliatory conciliation as described in Chapter 27 or mediation, and such proceedings activities are commenced within the time limits required above for commencement of an adjudication, then the time limits required in this section for commencement of an adjudication shall be suspended until such informal dispute resolution proceedings activities are completed. If the informal dispute resolution proceedings activities do not resolve the dispute, then an adjudication must be initiated within 30 days of the conclusion of such proceedings activities. A party initiating an adjudication All parties involved in a dispute shall provide written notice to the Secretary of the Faculty of the dates of the beginning and conclusion commencement of any informal dispute resolution proceedings activities. Any party who is no longer willing to participate in informal dispute resolution activities shall notify the Secretary of the Faculty and the other parties, and this shall end the suspension period.

D. Untimely Filing Special Committee

If a party does not file a Notice of Request for Adjudication and petition within the time limits prescribed in Subsections A, B and C above, then the right to an adjudication shall terminate. Notwithstanding the foregoing, if a faculty member files a Notice of Request for Adjudication and a petition after the time limits prescribed in Subsections A, B and C above have expired, and such notice and petition specifically and expressly allege that circumstances exist which would make it grossly unjust to refuse to grant the adjudication on the basis of untimeliness, then the Chair of the Adjudication Panel shall appoint a special committee of three panel members. The special committee shall determine whether the adjudication should be granted despite the untimely filing, on the grounds that it would be grossly unjust to refuse to grant the adjudication. In making such determination, the following factors shall be considered by the special committee:
1. The seriousness of the actions, events, or decisions from which a claim for relief allegedly arises, and the seriousness of the alleged impact on the person seeking relief.
2. The reasons for the untimely filing and the extent to which they were or were not within the control of the person seeking relief.
3. The degree of probable prejudice to other parties to the adjudication if the adjudication is granted. The special committee shall make its determination within ten days of notice of its appointment.

Section 28-36 Manner of Initiating Adjudications

RATIONALE: Changes below are proposed to update the Faculty Council to reflect current procedural practices and also 1) allows the Adjudication Panel Chair to, in certain circumstances, recommend to the hearing panel measures to increase efficiency of the adjudication process and 2) postpones distribution of materials to hearing panel members until all challenges have been resolved.

A. Filing an Adjudication Petition with the Secretary of the Faculty

The person requesting an adjudication shall file a Notice of Request for Adjudication and a petition with the Secretary of the Faculty. The Secretary of the Faculty shall maintain and make available upon request written procedures for filing an adjudication petition and may decline to accept an incomplete or improperly submitted petition. Until a petition is accepted by the Secretary of the Faculty, it shall not be deemed filed for purposes of evaluating it under the time limits prescribed. The Notice of Request for Adjudication shall be substantially the same form as prescribed by the Adjudication Panel and made available to the Provost and faculty members. The petition shall set forth with reasonable particularity the reason basis for the request for adjudication under Section 28-32, the relief sought, and the facts relied upon as the grounds for the petition and the relief sought. If the Provost is the requesting party, the Provost shall include a copy of the written report from the University Complaint Investigation and Resolution Office (UCIRO), the dean, or other administrative official that forms the basis of the request for adjudication. Within seven days of receipt of a notice and petition, the Secretary of the Faculty shall prepare an Adjudication Summary form that sets forth the names of the persons receiving the notice and petition, the persons who are required to respond and the time limits and procedure to follow when responding, and deliver complete copies of the notice, the petition, and the summary time limits and procedures for response to the Provost, the Chair of the Adjudication Panel, other parties, nonparty participants of right, if any, and any other faculty member, dean, or official of the administration, student or staff member who is named in the petition.

B. Filing a Response to a Petition

Any party against whom relief is sought shall respond to the petition by filing a response, which sets forth which facts of the petition are accepted and which are contested and any further assertions of fact or reasons why the relief requested should not be granted. The response shall be filed with the Secretary of the Faculty within 30 days of receipt of the notice, and petition and summary. The Secretary of the Faculty shall deliver complete copies of the response within seven days of receipt to all persons listed on the summary who have received copies of the notice and petition. Notwithstanding the foregoing, the time period for filing the response shall be suspended upon commencement of informal dispute resolution proceedings activities after the filing of the notice and petition but before the due date of the response. In the event that informal dispute resolution proceedings activities have been initiated, the University Ombud or such other person who has been requested to conduct the informal dispute resolution proceedings parties shall provide written notice to the Chair of the Adjudication Panel and to the Secretary of the Faculty. If the informal dispute resolution proceedings activities terminate without resolving the dispute, a party shall notify the Chair of the Adjudication Panel and the Secretary of the Faculty. The response shall be due on the later of ten days after the termination of such proceedings activities and the expiration of the original 30-day period for filing the response excluding the days during which the conciliation proceeding was open.

C. Determination by Chair of the Adjudication Panel

Within 14 days of receipt of the response, or within 14 days after expiration of the 37-day period following receipt of the notice and petition, whichever is earlier, the Chair of the Adjudication Panel shall:

- Determine whether the notice and petition have been properly and timely filed. In determining timeliness, the Chair shall have discretion to consider a petition, or response timely if the Chair determines that there has been a minor and nonprejudicial clerical or counting error in determining the applicable time limits;
• Determine whether a brief adjudication is appropriate under the provisions of Section 28-41 below, and if so, appoint a hearing officer to conduct the adjudication;
• Identify the parties and the nonparty participants of right, if any, to the adjudication;
• If a comprehensive adjudication is required, appoint the hearing officer, determine the appropriate composition of the hearing panel and appoint the members of such panel, under the provisions of Section 28-32 above.

• Determine, either upon the Chair’s own motion or motion of any party, whether two or more petitions by one or more parties should be consolidated for hearing before a single hearing panel because the petitions contain related or substantially similar grievances or the petitions arise out of the same or similar factual circumstances.

• Make suggestions to the hearing panel regarding possible procedures to expedite the hearings, including, but not limited to summary disposition based only on documentary evidence, including affidavits and declarations.

Where students, or staff, or non-faculty academic personnel are to be members of the panel, the Chair shall notify the Secretary of the Faculty who shall appropriate personnel and coordinate the selection of those persons.

Once the above specified determinations are made and the hearing panel, if required, is appointed, the Chair shall promptly notify the person who filed the notice and petition and all persons who are entitled to receive a copy of the notice and petition, as specified above, of such determinations, and the identity of the hearing officer and hearing panel members, and the rights of the parties to challenge appointees for cause as provided in Section 28-37. The Chair shall immediately give copies of all documents filed in the matter to the hearing officer and each member of the hearing panel. The Chair shall also promptly deliver to any nonparty participants of right a statement of their rights of participation in the adjudication.

D. Reassignment of Faculty Member Pending Resolution of Allegations

At any time after the petition has been filed allegations have been made, if a dean, chancellor or Provost believes there are compelling circumstances, such as danger to the health or safety of members of the University community, that warrant the suspension reassignment of the faculty member from teaching or other duties pending resolution of the adjudication allegations, the dean, chancellor or Provost may, after consultation with the Chair of the Faculty Senate, suspend reassign the faculty member for a period not to exceed the duration of the Section 25-71 process and any resulting adjudication and assign the suspended faculty member to other duties as the dean, chancellor or Provost deems appropriate. The faculty member's regular salary, benefits and other privileges shall continue during such suspension period of reassignment. A decision to suspend a faculty member under this section shall comply with the requirements of RCW 34.05.479 to the extent applicable, including the requirements of maintaining an official record and preparing a written order with findings of fact, conclusions of law and policy reasons.

Section 28-37 Disqualification of Adjudication Panel Chair, Hearing Officer and Panel Members

RATIONALE: This section now allows for a challenge to the adjudication panel chair and provides for a Vice chair to replace the chair should such a challenge be upheld.

A. Disqualification Initiated by Panel Chair, Hearing Panel Member, or Hearing Office

The Adjudication Panel Chair, a member of a hearing panel, or the hearing officer, shall disqualify himself or herself upon his or her own initiative immediately upon discovery of a cause for disqualification. Cause for disqualification shall include:

1. Reason to believe that some personal consideration or relationship might interfere with the hearing officer's or panel member's ability to reach an unbiased decision;
2. The hearing officer or panel member, outside of the proceedings, has received communications or has obtained information which creates a significant risk of substantial unfairness; or
3. The matter directly involves a departmental colleague or, if the matter involves a faculty member from a non-departmentalized school or college, a college or school colleague of the panel member or the hearing officer.
B. Disqualification Initiated by Challenge

Any party or nonparty participant to the adjudication may challenge the Adjudication Panel Chair, any panel member, or the hearing officer, for cause for the reasons stated in Subsection A above. If the facts supporting the disqualification are then known to the party or nonparty participant, the challenge must be made in writing to the Chair of the Adjudication Panel Secretary of the Faculty within seven days after receipt of notice that the person being challenged is the Adjudication Panel Chair, assigned hearing officer or a panel member. A copy of the written challenge shall also be provided to the other persons entitled to receipt of Notice of Request for Hearing. If the facts supporting the disqualification are discovered after notice of the person's appointment, the challenge shall be made in the same manner described above within seven days of discovery of such facts, and the written challenge shall include a statement regarding the circumstances of discovery of such facts. The Secretary of the Faculty shall appoint a disinterested hearing officer to review any such challenge to the Adjudication Panel Chair and decide whether there is sufficient cause to disqualify the challenged panel chair. If the panel chair is disqualified, the vice-chair of the Adjudication Panel shall assume the responsibilities of the chair for all decisions relating to the matter(s) in question. The Chair of the Adjudication Panel shall review any such challenge to the hearing officer or panel members and decide whether there is sufficient cause to disqualify the hearing officer or challenged panel member.

C. Disqualification of Panel Member by the Hearing Office or Chair of the Adjudication Panel

A hearing officer serving with a panel and the Chair of the Adjudication Panel may disqualify any member of such panel for failure or inability to make himself or herself available for the necessary proceedings, for repeated absences from the panel meetings required under this chapter, or for failure to familiarize himself or herself with the record of the adjudication or the necessary procedures.

D. Appointment Following Disqualification

If a hearing officer is disqualified, the Chair of the Adjudication Panel shall appoint another hearing officer. If a panel member is disqualified, then at the discretion of the Chair of the Adjudication Panel, the Chair shall either appoint another member of the Adjudication Panel to the hearing panel, or, if the adjudication is in a later stage, continue the adjudication with the remaining panel members.

E. Distribution of Documents Following Finalization of Initial Appointments

Upon finalization of the initial appointments of the hearing officer and hearing panel members, including the consideration of any challenges filed within the initial time limit of seven days, the Secretary of the Faculty shall immediately distribute to each of them copies of all documents filed in the matter.

Section 28-41 Brief Adjudications

A. Matters that Warrant a Brief Adjudication

Chair of the Adjudication Panel shall, pursuant to Section 28-36, Subsection C, determine that a brief adjudication be used for all cases whose sole issue is one of the following:
1. The allocation of discretionary or merit salary increases;
2. The allocation of space, support staff, or other resources or materials;
3. Teaching, committee or other assignments within the department, school or other unit;
4. A conflict between or among faculty members, other than claims of sexual, racial, or other legally impermissible discrimination or harassment or claims of scientific or scholarly misconduct; or

RATIONALE: Given that Brief Adjudication Panels are rarely employed, practice has been to appoint a BAP when the need arises, rather than having a standing Panel. The following change codifies that practice.

5. Any other issue which a the Chair and two members of the Brief Adjudication Panel determines is appropriate for brief adjudication. In making determinations of whether a brief adjudication is appropriate for a particular case, The Chair shall employ a Brief Adjudication Panel pursuant to this section, if the Chair determines that:
   a. The case does not fall clearly within one of the categories specified in Subsections A.1 through A.4 above but which may nevertheless be appropriate for a brief adjudication, or
b. It is unclear for any other reason whether a brief adjudication would be the appropriate procedure.

In a case involving Subsection A.5. The Chair shall convene a committee consisting of himself or herself and any two members of the Brief Adjudication Panel to constitute a . The Brief Adjudication Panel shall be a standing committee consisting of five members of the Adjudication Panel appointed from time to time by the Chair of the Adjudication Panel. The Chair and the two members of the Brief Adjudication Panel shall review the matter, confer, and make a decision whether a brief adjudication is appropriate for the case at issue. The review shall include consultation with any faculty member whose interests would be directly affected by the adjudication and review of records of any previous Brief Adjudication Panel decisions for similar cases. The decision shall be made with sufficient speed so that the Chair may make the necessary determinations and appoint a hearing officer and a hearing panel, if necessary, within the time limits specified in Section 28-36, Subsection C. The Chair shall prepare a written report summarizing the nature of any case submitted to a Brief Adjudication Panel, the decision made as to the type of adjudication to be used and the basis of such decision and shall include such report in the records of the Adjudication Panel. If the Chair and the two members of the Brief Adjudication Panel decide that a comprehensive adjudication is appropriate, none of the members of the Brief Adjudication Panel making such decision will serve on the hearing panel for that case.

B. Inappropriate Matters for a Brief Adjudication

Notwithstanding the foregoing, a brief adjudication shall not be appropriate for a case in which any one of the following factors is present:

1. Complex factual issues that require a formal fact finding process for resolution;
2. A significant sanction or other significant adverse impact on the faculty member, such as discharge of employment or revocation of tenure, if the decision is adverse to the faculty member;
3. Significant impact on the affected faculty member's academic career;
4. A relatively large number of persons involved in the dispute or affected by its outcome;
5. A series of actions or non-actions that taken alone are not significant but together exhibit a pattern of unfairness;
6. Allegations of unlawful discrimination; or
7. The protection of the public interest requires notice and an opportunity to participate to be given to persons other than the parties, including persons who would qualify as nonparty participants under the definition herein.

C. Investigation

Upon appointment, the hearing officer shall review the documents on file in the matter and conduct an investigation of the matter. The initial investigation, at the discretion of the hearing officer, may include any of the following:

- Meeting with the parties, together or separately;
- Communicating with the parties through mail or by telephone;
- Communicating with any other person that the hearing officer thinks can provide information relevant to the dispute; and
- Requesting relevant documents from any person.

As part of the investigation, the hearing officer must contact each of the parties and give each of them an opportunity to present written and/or oral evidence (determined at the discretion of the hearing officer) supporting the party's position in the matter and a written or oral statement of the party's position. The decision to restrict the parties' responses to written submissions and the decision of whether an informal hearing where all parties are present and are allowed to present oral statements and evidence are at the sole discretion of the hearing officer. If the hearing officer determines that an informal hearing is appropriate, the hearing officer shall schedule such hearing at a time convenient for all the parties, that is at least ten days and no more than 14 days following the date of appointment of the hearing officer. At least five days prior to such a hearing, the hearing officer shall notify the parties in writing as to the issues that may be addressed at the hearing, the evidence that will be relevant at the hearing and the general procedures to be followed at the hearing. The hearing shall be either recorded (sound only or video), or transcribed by a court reporter, as determined by the hearing officer. The hearing officer shall make a contemporaneous written record of any oral communication (in person or by telephone) relating to the investigation which is not heard by a party and shall distribute such written record immediately to all parties and to the person with whom the communication occurred. If the
person with whom the communication occurred has a different recollection of the conversation, that person shall immediately deliver to the hearing officer a written statement detailing the differences. The hearing officer shall immediately deliver such a statement to the parties and shall include such statement in the written record of the proceeding.

D. Converting a Brief Adjudication to a Comprehensive Adjudication

If the hearing officer discovers in the course of investigation that the issues are sufficiently complex or there are other factors that indicate that a comprehensive adjudication is required for fair resolution of the matter, the hearing officer will immediately notify the Chair of the Adjudication Panel and the parties of such determination. Upon receipt of such notification, the Chair of the Adjudication Panel shall appoint a hearing panel under the procedures described in Section 28-33 and the matter will proceed as a comprehensive adjudication. At any time during the course of a brief adjudication a party may request that the adjudication be converted to a comprehensive adjudication by giving notice to the hearing officer and the other parties of such request together with a statement of the reasons why a comprehensive adjudication is required for a fair resolution of the matter. The hearing officer will rule on such a request within two days of receipt. If the hearing officer rules against such conversion, the brief adjudication will proceed and the party requesting the conversion may again request a comprehensive adjudication during the appeal process of the hearing officer's decision, as provided below in Section 28-61.

E. Written Decision

Within 30 days of appointment, the hearing officer will render a written decision to the parties, together with a brief statement as to the reasons for the decision and a statement of the parties' rights to appeal the decision.

F. The record of a brief adjudication shall consist of only the following:

1. The notice and petition filed by the party initiating the adjudication, all responses filed by other parties, and the Adjudication Summary prepared by the Chair of the Adjudication Panel;
2. Evidence received or considered;
3. All written statements submitted by persons and parties, all written records of oral communication prepared by the hearing officer and circulated to the parties and all amendments thereto that have been submitted;
4. The transcript or recording of any hearing held during the course of the adjudication; and
5. Any other document regarding the matter that was considered or prepared by the hearing officer or the Brief Adjudication Review Panel during review of the hearing officer's decision.

Section 28-51 Comprehensive Adjudications—Nonparty Participants

A. Administrative Party of Right

The hearing officer may grant a petition filed at any time for participation as an administrative party of right upon determining that the petitioner is a necessary party or by virtue of being immediately superior in administrative rank to the respondent. Such person's status as an administrative party of right shall commence only upon issuance of an order from the hearing officer allowing such person's participation.

B. Permissive Nonparty Participant

In addition to the persons who may be nonparty participants of right, the hearing officer may grant a petition filed by any person at any time for permissive nonparty participation, upon determining that the petitioner has a substantial interest that will be affected by the outcome of the adjudication, that participation by such party in the adjudication is necessary to protect that interest and participation by that party will not unduly delay or prejudice the determination of the rights of the parties to the adjudication. Such person's status as permissive nonparty participant shall commence only upon issuance of an order from the hearing officer allowing such person's participation. The hearing officer has the discretion to impose conditions on such person's right to participate and may limit his or her rights to participate, either at the time that the right to participate is granted or at any subsequent time. For a comment on nonparty participants' right to be represented by counsel, see Section 28-52, Subsection G below.
C. **Nonparty Participants Rights of Participation**

All nonparty participants, both of right and permissive, in addition to the right to challenge the hearing officer or a member of the hearing panel for cause as provided above, shall have the following rights of participation in the adjudication:

1. Right to receive copies of all documents filed in the adjudication, within the same time limits as such copies are required to be delivered to the parties in the adjudication.

2. Right to timely notice of date, place and time and to attend the prehearing conference, the hearing, and any interim proceedings.

3. Right to file written independent statements and responses to documents filed by the parties at any time prior to the hearing (including written statements and responses regarding a pending motion for summary disposition under Section 28-52, Subsection D), provided that any such statements or responses are delivered by the nonparty participant to each party to the adjudication within two days of delivery to the hearing panel.

   In addition to the above listed rights, a nonparty participant may, at the discretion of the hearing officer and the panel, be granted the following rights of participation:

4. Right to have counsel accompany them to all proceedings.

5. Right to be represented by counsel during the proceedings, provided that if the parties choose not to be represented by counsel [see Section 28-52, Subsection G], then a nonparty participant may not be represented by counsel.

6. Right to cross-examine witnesses, introduce evidence and call additional witnesses during the hearing, either on his or her own behalf or through counsel, subject to the limitation in Section 28-51, Subsection B.C.5.

7. Right to give opening and closing statements, either on his or her own behalf or through counsel.

8. If unable to be present at the hearing or any preliminary proceeding, the right to be represented at the hearing and all preliminary proceedings by a special representative chosen by the nonparty participant and approved by the hearing officer.

9. Such other rights of participation in the adjudication as the hearing officer or hearing panel determines to be conducive to a fair and efficient hearing.

A nonparty participant shall have the rights specified in Subsections C.4 through C.9 above only to the extent the hearing officer or hearing panel has determined to be conducive to a fair and efficient hearing and which would aid in the panel's resolution of the matter.

The hearing officer shall make an initial determination prior to the prehearing conference as to the additional rights of participation, if any, that shall be given to the nonparty participant. The nonparty participant and any party may file a written request with the hearing officer prior to the prehearing conference regarding the extent of a nonparty participant's participation rights, and may make an oral request regarding participation rights at the prehearing conference. The determination of the extent of a nonparty participant's participation rights shall be made by the hearing officer, subject to revision by the hearing panel, and shall be included in the Prehearing Order. The Chair shall promptly deliver to any nonparty participants of right a statement of their rights of participation in the adjudication.

**Section 28-52 Comprehensive Adjudications—Preliminary Proceedings**

A. **Summary of Disposition Without Hearing**

At the request of any party or on the panel's own motion at any time after the response has been received, the hearing panel may determine that the adjudication or a particular claim or issue material to the adjudication should be resolved by summary disposition without a fact-finding hearing.
If the answering party alleges or the panel preliminarily concludes that the petition does not present a controversy under Section 28-32 that entitles the petitioner to a hearing when all factual allegations are viewed in the light most favorable to the petitioner, the panel shall give notice to the parties and any nonparty participants of:

1. The deadline for submission of written offers of proof by affidavit or otherwise, and for submission of argument, and
2. At the panel's option, a hearing concerning the proper interpretation and scope of Section 28-32.

The panel shall issue a decision to grant or deny summary disposition within five days after the submission of the written materials or the conclusion of any hearing. If summary disposition is granted the panel shall dismiss the petition and issue a decision pursuant to Section 28-54.

B. Initial Plan

As soon as possible after appointment, the hearing officer and hearing panel shall review the pleadings filed, identify the issues and discuss an initial plan for the conduct of the hearing. Such plan shall include the preliminary determination of the extent to which any nonparty participant will be allowed to participate. The hearing officer and hearing panel shall immediately consult with the parties and any nonparty participants as to a convenient time and place to hold the prehearing conference.

C. Notice of Prehearing Conference

Within ten days after appointment of the hearing panel, the hearing officer, at the direction of the hearing panel, shall prepare and deliver to the hearing panel, the parties and nonparty participants a Notice of Prehearing Conference, specifying the time and place of the prehearing conference. Such notice shall inform the parties as to the hearing officer's and panel's initial plan for the hearing and preliminary determinations, such as the extent of participation rights of nonparty participants and identification of issues, including all issues that the hearing officer and panel view as uncontested or irrelevant to resolution of the dispute. Such notice may further identify the evidence, including documents and witness testimony, that the hearing officer and panel consider necessary at the hearing. The prehearing conference shall be held no later than 20 days after appointment of the hearing panel.

D. Prehearing Conference

All parties and nonparty participants and their legal counsel (if otherwise allowed) shall be entitled to be present at the prehearing conference. The hearing officer and the entire hearing panel shall also be present. The hearing officer shall preside over the prehearing conference. At the prehearing conference, the hearing officer, the panel and the parties shall discuss and agree upon the evidence to be presented and the issues to be addressed at the hearing. The hearing officer, the panel and the parties shall also agree upon any issues that can be settled by the parties before the hearing, or are uncontested or irrelevant to the adjudication, provided that if the parties cannot reach agreement on these matters the decision of the panel shall control. The hearing officer, panel, and the parties shall also discuss the feasibility of informal dispute resolution procedures to attempt settlement of the dispute before the hearing. If the parties agree to informal dispute resolution procedures, then the adjudication process shall be suspended while such procedures are pursued. Any nonparty participants present at the prehearing conference shall be allowed to participate in the discussion and the decision making to the extent determined by the hearing officer and hearing panel.

E. Prehearing Order

Unless the adjudication has been disposed of completely by summary disposition, the hearing officer, at the direction of the panel, shall issue a Prehearing Order within 15 days of the prehearing conference, which shall set forth the issues to be addressed at the hearing, the factual issues which are uncontroverted, the witnesses to be called and the other evidence to be presented, the extent to which any discretionary rights to participate will be given to nonparty participants, the extent to which depositions, requests for admission and any other form of discovery will be allowed and any other matters the hearing panel shall deem appropriate in setting the procedure to be followed at the hearing. Such notice shall also set the time and place of the hearing and shall contain the information required by RCW 34.05.434. The hearing shall be set no less than ten days and no more than 30 days after the notice of the prehearing conference was issued.

F. Open or Closed Adjudication Proceedings
The Prehearing Order shall specify whether the adjudication shall be open or closed. A determination at a later date that the hearing should be closed shall be made by written protective order.

G. **Representation by Counsel**

Any faculty member who is a party to a proceeding under this chapter shall have the right to be represented by counsel at all stages in the proceedings. Normally, if the faculty member chooses not to be represented by counsel at proceedings before the hearing panel and/or the hearing officer, the administration will not be so represented, except in cases where the faculty member is an attorney. Where the faculty member chooses to be represented by counsel, the administration shall not be obligated to reimburse the faculty member for the attorneys’ fees and costs he or she incurs, except as provided under Section 28-54, Subsection B.

H. **Amending the Prehearing Order**

If after the Prehearing Order is issued, a party shall receive additional information, the party may request that the panel amend the Prehearing Order to allow the presentation of such additional information at the hearing and may request leave to amend its pleadings on file. Such request shall be served on all parties and nonparty participants. The hearing panel has full discretion to allow or deny such request and may grant a continuance if a non-requesting party needs additional time in which to prepare for and respond to the additional information.

I. **Hearing Office’s Instructions**

The hearing officer may instruct any person who is a party to the adjudication or an administrative officer or administrative employee of the University to appear and to give testimony under oath or affirmation, or to produce a specific document or other thing belonging to a party or to the University relevant to the issues in the adjudication.

1. If the person to whom the instruction is directed is a non-administrative party to the adjudication and that person refuses or fails to appear at the time and place designated to give testimony or to produce the documents or things specified:

   a. If the hearing officer finds that the testimony, documents, or things sought are under the control of the non-administrative party to produce and are not privileged for purposes of the adjudication, then the hearing panel may impose such sanctions as are appropriate.

   b. Sanctions may include dismissal of the adjudication or the drawing of inferences, to be stated in the record, with respect to the issues to which the evidence sought would have been relevant, adverse to the position of the faculty member or other party to the adjudication.

2. If the person to whom the instruction is directed is an administrative officer or administrative employee of the University and refuses or fails to appear at the time and place designated to give testimony, or to produce the documents or things specified:

   a. The hearing officer shall inform the President in writing of such refusal and failure and of the probable relevance of the testimony or documents or things sought.

   b. Unless the President determines that the information sought is legally privileged from disclosure, or subject to overriding University policies as to confidentiality, the President shall take such steps as may be necessary to enforce compliance with the instruction.

   c. If the President refuses or fails to secure such compliance, and if the hearing panel determines that the testimony, documents, or things sought are not legally privileged or confidential for purposes of the adjudication, then it may impose such sanctions as it deems appropriate. These sanctions may include dismissal of the adjudication or the drawing of inferences, to be stated in the record, with respect to the issues to which the evidence sought would have been relevant, adverse to the position of the University or administrative officer in the adjudication.

3. Statutory powers of subpoena are available to the hearing panel as specified in RCW 34.05.588(1).

J. **Telephone, Television, or Other Electronic Participation**

In the discretion of the hearing officer, and where the rights of the parties will not be prejudiced, all or part of any meeting or conference required hereunder may be conducted by telephone, television or other electronic
means. Each participant in the conference or meeting must have an opportunity to participate effectively in, to hear, and if technically and economically feasible, to see the entire proceeding while it is taking place.

K. Discovery or Protective Orders by Hearing Officer

The hearing officer may at any time issue any discovery or protective orders that he or she deems appropriate, and such orders shall be enforceable under the provisions of Chapter 34.05 RCW regarding civil enforcement of agency actions.

Section 28-53 Comprehensive Adjudication—Procedure at Hearing

A. Parties Entitled to be Present

In both open and closed proceedings before a hearing officer and hearing panel the following persons are entitled to be present:

1. The parties and nonparty participants of right and their advisors and representatives, to the extent advisors and representatives are allowed under other terms of this chapter. Advisors may be present but may not speak on behalf of the parties in the proceedings unless agreed to by both parties.
2. The hearing officer, the hearing panel members and a secretary or recorder.
3. Persons serving in an advisory capacity to the panel, unless their presence is objected to for cause by either party and the panel sustains the objection.
4. Witnesses and their advisors, except that the hearing officer may upon a showing of good cause, as specified in the record of the proceeding, exclude witnesses and their advisors from the hearing room except while testifying.
5. Such other persons as specifically authorized by the hearing officer or the panel, unless their presence is objected to by either party and the objection is sustained.

B. Recording of Hearing

The hearing shall either be recorded, audio only or video, or transcribed by a court reporter, as determined by the hearing panel. Such recording or transcription shall be made at University expense. Copies of the recording or transcript shall be made available to any party or nonparty participant of right at University expense upon request.

C. Evidence

If the facts in the case or relief requested are in dispute, testimony of witnesses and other evidence relevant to the issues and to the relief requested shall be received if offered. The hearing officer may admit and consider evidence on which reasonably prudent people are accustomed to rely in the conduct of their affairs. The hearing officer shall give effect to the rules of privilege recognized by law, shall exclude evidence that is excludable on constitutional or statutory grounds and may exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence, and evidence whose probative value is substantially outweighed by the danger of undue prejudice to any party or nonparty participant. The hearing officer and the hearing panel shall refer to the Washington Rules of Evidence as non-binding guidelines for evidentiary rulings. All testimony of parties and witnesses shall be given under oath or on affirmation. Documentary evidence may be received in the form of copies or excerpts or by incorporation by reference. Official notice may be taken of any judicially recognizable facts and codes or standards that have been adopted by an agency of the United States, this state or another state or by a nationally recognized organization or association. Parties and nonparty participants shall be notified either before or during the hearing of the material so noticed and the sources thereof and shall be afforded an opportunity to contest the facts and materials so noticed (except to the extent a nonparty participant's right to do so is limited by the hearing officer or hearing panel).

D. Hearing Officer's Role to Regulate the Hearing

The hearing officer shall regulate the course of the hearing in conformity with the Prehearing Order and shall not be required to follow formal court procedure. To the extent necessary for full disclosure of all relevant facts and issues, the hearing officer shall afford to all parties and nonparty participants the opportunity to respond, present evidence and argument, conduct cross-examination and submit rebuttal evidence, except as restricted by a limited grant of nonparty participation or by the Prehearing Order.
E. Panel Members Actions at Hearing

The panel in its discretion may:

1. Direct the parties to produce information on specific issues deemed significant by the panel.
2. Proceed on its own initiative to call witnesses to testify or admit evidence on its own motion.

F. Witnesses

The parties shall have the opportunity to confront all witnesses. In the event that witnesses are unavailable or at the consent of the parties, depositions from witnesses or answers to written interrogatories may be presented or telephone depositions may be made in lieu of personal appearance at the hearing. The panel, in its discretion, may make such information part of the record. The hearing panel may take whatever other steps it deems reasonable and fair to all persons involved to deal with the unavailability of a witness.

G. Adjournment

The panel, in its discretion, may adjourn the proceedings from time to time to allow the further development of the evidence.

Section 28-54 Comprehensive Adjudication—Decision

A. Decision by Vote

Within 30 days after the conclusion of the hearing, or after the due date of all post-hearing briefs requested, if later, the panel shall make known its decision in writing. The decision shall be made by majority vote of all panel members, excluding the hearing officer, provided that in any adjudication initiated under Section 28-32, Subsection A, to remove or dismiss a faculty member pursuant to Chapter 25, Section 25-51 or 25-63 of the Faculty Code, the decision shall be made by a vote of five members of a seven-person panel or four members of a five-person panel or two members of a three-person panel. If at the conclusion of the hearing, there is an even number of panel members remaining due to loss of one or more panel members and the remaining panel members are evenly divided as to the decision on any issue or award of relief, the hearing officer shall cast a vote, but only to the extent necessary to break the deadlock.

B. Findings

In the written decision, the panel shall set forth its findings with respect to each of the material grounds or issues raised and to the relief requested by the parties and state its conclusions regarding those issues. It shall also state specifically any action necessitated by the decision and identify the specific relief to be provided, including but not limited to suspension or dismissal, reprimand or warning, restoration or award of privileges, benefits or status, a cease and desist order, an order that a certain party receive counseling or other medical treatment, and including direction to the Provost or other appropriate party to take such steps as may be necessary to carry out the decision. The panel shall have the authority to recommend the award of compensation for economic relief to a party or nonparty participant of right where such party or nonparty participant of right has made a timely request in his or her pleadings for such relief and has proven the right to the relief during the course of the proceedings. In addition, the panel has authority to recommend an award of reasonable attorneys' fees to a prevailing faculty member if:

1. The administration was the unsuccessful party in the case and the panel determines that the position of the administration in the case was grossly unreasonable or maintained in bad faith, or
2. The prevailing faculty member was obliged to hire legal counsel to represent him or her in a comprehensive adjudication by virtue of the administration's failure to waive representation by legal counsel as provided in Section 28-52, Subsection G.

RATIONALE: This section modifies the parties notified when a panel decision is reached to be consistent with other sections.

C. Copies of Written Decision

Within 24 hours of the panel's written decision being put in final form, the panel shall deliver copies of the decision to the President, Provost, all parties, and all nonparty participants. Copies shall also be filed with the
Section 28-61 Review Procedures

RATIONALE: Changes to this section clarify that any and all disputed actions by persons involved in conducting the adjudication may be appealed to the President and the timeline for doing so. Parties notified are amended to be consistent with other sections.

A. Appeals

The Chair of the Adjudication Panel shall have discretion to allow an appeal to the President of a decision dismissing one or more claims which do not dispose of the adjudication in its entirety. The Chair shall also have discretion to allow an appeal to the President of a decision on a motion to disqualify the appointment of a panel member and/or hearing officer. In the event that a motion to disqualify the Chair of the Adjudication Panel has been denied, a party shall have the right to have this decision reviewed immediately by the President. In the event that the President is a party to the adjudication, the foregoing appeals shall be heard by the Board of Regents.

AB. Review Panel

A decision of a hearing officer in a brief adjudication shall be submitted to the Brief Adjudication Review Panel ("Review Panel"), which shall be a standing committee consisting of members of the Adjudication Panel, appointed by the Chair. If the Review Panel takes no action and no party to the adjudication has filed a petition for review of the hearing officer's decision within 21 days of issuance of the decision, then the decision shall become the final decision of the University. If a party files a petition for review or the Review Panel elects to review the decision, all parties shall receive notice of such review. The Review Panel shall exercise all the decision making power that it would have had to decide and enter the decision had the Review Panel presided over the hearing, except to the extent that the issues subject to review are limited by a provision of law or by the Review Panel upon notice to all the parties. In reviewing findings of fact by the hearing officer, the Review Panel shall give due regard to the hearing officer's opportunity to observe the witnesses. The Review Panel shall afford each party an opportunity to present written argument and may afford each party an opportunity to present oral argument. The Review Panel shall complete its review within 20 days of the decision to review and shall enter a final order or remand the matter for further proceedings, with instructions to the hearing officer who entered the initial decision. The order shall include a description of any judicial or other review that may be available. Upon remanding a matter, the Review Panel shall order such temporary relief as is authorized and appropriate.

If no party to the adjudication has filed a petition for review of the Review Panel's final order within 21 days of the mailing of the order to the parties, the order shall become the final decision of the University. Only a final order of the Review Panel that reverses or amends the decision of the hearing officer may be appealed. Any such appeal shall proceed under the procedures of Subsection B of this section below.

BC. Presidential Review

Subject to the provisions of Section 28-61 A., any dismissal for untimeliness or failure to state a proper basis for an adjudication or order of a hearing panel in a comprehensive adjudication, other than cases where the President is a party in the case, shall become a final decision of the University unless either party files an appeal to the President within 21 days of the date of mailing of the decision to the parties, or unless the President elects to review the decision by giving written notice of intent to review to the parties within 21 days of the date of delivery of the decision to the President. The presidential review shall include consideration of the written record. The President may request the parties to submit additional written arguments on particular issues and may request oral argument from the parties. To the extent that parties are asked to provide written documents, nonparty participants of right shall also have the opportunity to provide written documents and, at the discretion of the President, nonparty participants of right may be allowed to give oral arguments. No new evidence shall be considered by the President.

Within 60 days of commencement of the review, unless in the President's discretion more time is necessary to consider additional arguments, the President shall make one of the following determinations:

1. Affirm the panel's decision; or
2. Remand for further proceedings.

Any decision of the President to remand must be based on findings of the President that the decision of the panel was arbitrary or capricious; the procedures followed by the Adjudication Panel Chair or the hearing panel or any other person involved with the adjudication procedures in reaching their decisions, were materially and prejudicially unfair or not in accordance with the law or University rules or regulations; and/or the review in which he or she has engaged has revealed the importance of evidence which the panel did not adequately consider.

The panel then has 30 days to reconsider its decision and the reasons given by the President for remand, and to report back to the President its decision on remand. The President shall then affirm, reverse or amend the panel's decision on remand. Any decision of the President to reverse or amend must be based on findings that the panel's decision was:

1. Not supported by a preponderance of the evidence in the record, or
2. Was arbitrary or capricious, or
3. The procedures followed were materially and prejudicially unfair or in violation of law or University rules.

A decision by the President to affirm, reverse or amend the decision of the panel is a final decision of the University.

CD. Board of Regent's Review

Any order of a hearing panel in a case where the President is a party in the case shall become a final decision of the University unless either party files an appeal to the Board of Regents within 21 days of the date of mailing of the decision to the parties or unless the Board of Regents elects to review the decision by giving written notice of intent to review to the parties within 21 days of the date of delivery of the decision to the Board of Regents. The Board of Regents review shall include consideration of the written record. The Board of Regents may request the parties to submit additional written arguments on particular issues and may request oral argument from the parties. To the extent that parties are asked to provide written documents, nonparty participants of right shall also have the opportunity to provide written documents and, at the discretion of the President, non-party participants of right may be allowed to present oral arguments. No new evidence shall be considered by the Board of Regents.

Within 60 days of commencement of the review, unless in the Board's discretion more time is necessary to consider additional arguments, the Board shall make one of the following determinations:

1. Affirm the panel's decision;
2. Reverse or amend the panel's decision; or
3. Remand for further proceedings.

Any decision of the Board of Regents to reverse, amend, or remand must be based on findings of the Board that the decision of the panel was arbitrary or capricious; the procedures followed by the panel in reaching its decision were materially and prejudicially unfair or not in accordance with the law of University rules or regulations; and/or the review in which he or she has engaged has revealed the importance of evidence which the panel did not adequately consider. Any decision to reverse or amend without remand for further proceedings must include a finding that, and explanation as to why, further proceedings are not advisable. A decision by the Board to affirm, reverse or amend the decision of the panel, is a final decision of the University.

DE. Remanding a Decision

If upon review a decision is remanded to the panel for further proceedings, the panel shall have 30 days within which to hold such further proceedings as are necessary to comply with the directions from the President (or the Board of Regents) and to respond to the President's (or Board of Regents') action with the results of its reconsideration of the case. Upon receipt of the panel's reconsidered decision, the President or Board of Regents shall have 30 days to make a final determination of the case. In the event that the President or Board of Regents decides to reverse or amend the reconsidered decision of the panel, the final decision shall state the basis of such decision, including specific findings as to why the decision of the panel was arbitrary or capricious, or why the procedures followed by the panel in reaching its decision were materially and prejudicially unfair or not in accordance with the law or University rules or regulations.
EF. Copies

Copies of all decisions, opinions, conclusions, instructions, and other written communications issued in the review process shall be sent to the Provost, all parties, nonparty participants, the Secretary of the Faculty, and the Chair of the Adjudication Panel, the Chair of the Faculty Senate, and the University Ombud for the information of the Conciliation Board, as soon as the decision becomes final.

FG. Petition for Reconsideration or Clarification

Any party may file a petition for reconsideration or clarification within ten days after the mailing of the following: a final decision of the President under Subsection B of this section, or a final decision of the Board under Subsection C of this section. Such petition shall be filed with the person or persons issuing the order or decision and the Secretary of the Faculty and shall be served on all parties. The filing of such petition suspends the time limitations for filing for further administrative review or for judicial review, if available. Such petition shall set forth the grounds upon which relief is requested. The petition shall be disposed of by the same person or persons issuing the order or decision, if reasonably available. The disposition shall be in the form of a written order denying the petition, granting the petition and dissolving or modifying the order or decision, or granting the petition and setting the matter for further hearing. The petition is deemed denied if within 20 days from the date the petition is filed the person or persons issuing the order or decision have not disposed of the petition or served the parties with notice specifying a date of disposition of the petition, and the Secretary of the Faculty has confirmed that the person or persons issuing the order or decision do not intend to act on the petition.

Section 28-71 Time Deadlines

Unless otherwise specified in this chapter, requests for extensions of timelines shall be made to and decided by the Secretary of the Faculty. If a hearing officer, a hearing panel, the Chair of the Adjudication Panel, the Secretary of the Faculty or any reviewing body shall fail to meet any of the deadlines set in this chapter, such failure shall not affect the validity of the procedure, or any decision resulting from an adjudication held pursuant to this chapter, unless the delay was unreasonable and unduly prejudicial to the interests of any party or nonparty participant of right.

Section 28-81 Availability of the Record

At the conclusion of the proceedings, the record of the hearing shall be maintained by the Secretary of the Faculty in accordance with the UW's Records Retention Schedule and shall be available for review to persons or organizations not party to the proceedings but having an interest therein, not inconsistent with the tenets of academic freedom and privacy rights of the parties or persons involved, subject to the written approval of both the President and the faculty member or members involved in the proceeding. Copies of any portion of the record previously transcribed shall be made available at actual duplication cost in accordance with these same provisions.

RATIONALE: The following section reflects established legal precedent regarding confidentiality of deliberative processes in quasi-judicial proceedings. Faculty members involved in these proceedings, especially as members of the Adjudication Panel, are often unsure of how protected they are should a matter go into litigation outside the university. This section reiterates that protection to the extent permitted by law. Some limits are described in Lutheran Day Care v. Snohomish County., 119 Wash. 2d 91, 99-117, 829 P.2d 746, 750-58 (1992).

Section 28-82 Confidentiality and Immunity

A. Confidentiality

The deliberations of a hearing panel shall be confidential, as shall deliberations of members of a special committee appointed under Section 28-35, Subsection D., those of members of a Brief Adjudication Panel, and those of members of a Brief Adjudication Review Panel.

B. Immunity

Neither the Chair or Vice Chair of the Adjudication Panel, hearing officers, members of a hearing panel, and members of other panels described in the prior section, nor the Secretary of the Faculty, shall be subject to a petition alleging wrongdoing under this chapter based on his or her actions or inactions carried out pursuant to the duties prescribed by this chapter.
Section 28-91 Implementation

Upon completion of the adjudicative proceedings, the President shall instruct the parties to do whatever is necessary to implement the decision and shall take all action necessary to insure that relief awarded is realized in fact. Copies of these communications shall be sent to all parties, nonparty participants, the hearing officer and hearing panel, and the Secretary of the Faculty.

Section 28-101 Report of the Adjudication Panel

The Chair of the Adjudication Panel shall annually report to the faculty in a Class C Bulletin in September the number of brief and comprehensive adjudicative proceedings commenced or concluded during the prior academic year and the action that ensued. Names of the grievant or accused shall not be published.

RATIONALE: The following section has been revised and placed in the adjudication procedures manual. The original text was the result of non-binding Class C legislation.

Footnote: Policy Regarding Procedures in the Selection and Appointment of Student and Staff Members on the Adjudication Panel

A. The following rules for the selection of student members of the Adjudication Panel are based on drafts submitted by the ASUW and GPSS:

1. Six undergraduate students shall be selected by ASUW and six graduate or professional students shall be selected by GPSS to serve on the Adjudication Panel according to the ordinary appointment processes of those organizations.
2. Student members shall be matriculated, full-time students in good academic standing who intend to be in residence at the Seattle campus for two years.
3. Members of the ASUW Board of Control, ASUW Commission Directors, and officers of the GPSS are ineligible for appointment to the panel.
4. Members shall be appointed, or reappointed, for a term of one calendar year, to be effective the start of the following Autumn Quarter.
5. Every effort shall be made to appoint a diverse group of students to the panel, to maintain a balance with regard to gender, living group, academic area, race and ethnicity.
6. ASUW and GPSS shall submit the names of the persons selected to the Chair of the Faculty Senate as early as possible during Spring Quarter for consideration at the next meeting of the Senate Executive Committee and approval at the following meeting of the Faculty Senate.

B. The following rules for the selection of staff members of the Adjudication Panel are based on a draft submitted by the Director of Personnel Services:

1. Six members of the staff shall be selected by the Director of Personnel Services and the Professional Staff Advisory Council from persons nominated by each of the collective bargaining units and the Professional Staff Organization.
2. Staff members shall be full-time employees with at least three years’ experience on staff at the University of Washington.
3. Officers and board members of organizations representing University employees are ineligible for appointment.
4. Staff members shall be appointed, or reappointed, for a term of three calendar years, beginning on September 16, except that of the initial six appointees, two shall be appointed for a period of one year, two shall be appointed for two years; and two shall be appointed for three years.
5. Every effort shall be made to appoint a diverse group of staff members to the panel, seeking to maintain a balance with regard to gender, age, employment category, race, and ethnicity.
6. The Director of Personnel Services shall submit the names of the persons selected to the Chair of the Faculty Senate as early as possible during Spring Quarter for consideration at the next meeting of the Senate Executive Committee and approval at the following meeting of the Faculty Senate.