Published on *University of Colorado* (http://www.cu.edu)

Policy 5H: Faculty Senate Grievance Process [1]

I. Introduction and Authority

This policy is enacted under the authority provided by Article 5.C.3 of the Laws of the Regents. Article 5.C.3 provides:

(A) Nature of Grievances

(1) Any member of the Faculty Senate who is denied reappointment, with or without tenure, or who is denied promotion and who believes that such action is unjustified and constitutes a specific encroachment upon his or her rights may file a grievance with the Faculty Senate Committee on Privilege and Tenure.

(2) Grievance cases involving perceived violations of academic rights, privileges, or tenure, including, but not limited to, those arising during a post-tenure review process, may also be filed with the Faculty Senate Committee on Privilege and Tenure.

(B) Grievance Proceedings

(1) The Faculty Senate Committee on Privilege and Tenure shall be constituted as provided in the Faculty Senate Constitution and shall investigate, mediate and hear grievances that are submitted to it by members of the Faculty Senate in accordance with the procedures described in regent policy and in accordance with other applicable rules and procedures adopted pursuant to regent policy.

(2) Findings, conclusions, and recommendations of the Faculty Senate Committee on Privilege and Tenure shall be forwarded to the president or campus chancellor who shall, upon review thereof, take such action as is deemed to be in the best interests of the university and in accordance with these regent laws, regent policies, and applicable federal and state laws, rules and regulations. The chancellor or president shall refer the recommendations to the Board of Regents for final action as required by regent laws and policies.

(C) Mediation

Mediation shall be available during the grievance process as a means of resolving faculty grievances.

II. Applicability

As provided in Article 5.C.3 of the Laws of the Regents, this grievance process applies to grievances submitted by members of the Faculty Senate. Membership in the Faculty Senate is described in Article I.A.2.a. of the University of Colorado Faculty Senate Constitution ("Faculty Senate Constitution"), which provides:

The Faculty Senate consists of all members of the general faculty of the University of Colorado with the following titles whose appointments are fifty-percent or more: professor, associate professor, assistant professor, senior instructor, instructor, scholar in residence, artist in residence. Adjoint, attendant, clinical and research faculty with fifty-percent or more appointments in the above ranks are also members of the Faculty Senate; visiting professors are not. The designated representative from the Retired Faculty Association to the Faculty Council shall be a member of the Faculty Senate during his/her tenure as representative. Ex officio members with the right to vote are the president of the university; the vice presidents; the chancellors; the vice chancellors; all deans; the directors of the budget, libraries and museum; and professors emeriti and emeritae.

III. Faculty Senate Privilege and Tenure Committee

A. Authority and Jurisdiction

As provided in Article 5.C.3 of the Laws of the Regents, the Faculty Senate Privilege and Tenure Committee (hereinafter "Committee") is authorized by the regents to investigate, mediate, and hear grievances submitted to it by members of the Faculty Senate. The jurisdiction of the Committee is expressly limited to the review of those grievances described in Articles 5.C.3.(A)(1)and (2) of the Laws of the Regents. Grievance cases are either (1) filed by a member of the Faculty Senate who is denied reappointment, with or without tenure, or who is denied promotion and who believes that such action is unjustified and constitutes a specific encroachment upon his or her rights; or (2) filed by a member of the Faculty Senate alleging other perceived violations of his or her academic (faculty) rights, privileges, or tenure, including, but not limited to, those arising during a post-tenure review process or as a result of suspensions or other disciplinary actions, excluding dismissal for cause(dismissal for cause cases are handled under the regent policy entitled "Faculty Dismissal for Cause Process"). The Committee shall not have jurisdiction over an administrator's grievance related to the performance of administrative duties unless there are alleged direct consequences for the administrator's faculty status, rights or privileges. Faculty tenure, privileges and rights are as enumerated in the Laws of the Regents and regent policies and must conform to the constitutions, laws, and regulations of the United States and the state of Colorado.

B. Organization

According to Article II.D. of the Faculty Senate Constitution, the Committee is a committee of the Faculty Senate. The Committee is organized and its members are appointed as described in Article II.D.1. of the Faculty Senate Constitution and Section II.D.1. of the Bylaws of the Faculty Senate of the University of Colorado ("Faculty Senate Bylaws"). Members of the Committee shall be members of the Faculty Senate.

The Committee is organized as investigative panels. A panel shall consist of five (5) members who serve as investigators and a chair, who shall be the presiding officer of the panel. A

quorum of the panel for the purpose of conducting business shall be three investigator members and the panel chair. The number of panels for each senate year shall be determined by the chair of the Committee (hereinafter "Committee Chair").

Members of the Committee who are designated as investigators shall carry out level-1 investigations and shall act as members of hearing panels in level-2 hearings. No investigator shall serve as a level-1 investigator and as a member of a level-2 hearing on the same grievance.

Members of the Committee designated as mediators shall be trained and neutral individuals who facilitate communication, promote understanding, focus the parties in a grievance on their interests, and assist the parties in developing options for reaching an informed resolution. Committee mediators shall carry out mediations consistent with published professional mediation standards. In consultation with the panel chair and with the consent of the parties, the Committee Chair shall assign a Committee mediator to a panel on a case-by-case basis to handle the mediation of a grievance. Committee mediators shall not be present during committee discussions of grievances or participate in investigations or hearings.

The Committee shall annually elect a Committee Chair, a vice chair (hereinafter "Committee Vice Chair") and panel chairs.

The Committee Chair shall be the spokesperson for the Committee. The Committee Chair shall not serve as a panel chair or vote on panel reports or recommendations. The Committee Chair shall perform such functions as are required by the grievance procedures and by internal administrative rules, including:

a. acting as the liaison between the Committee and all parties in a grievance;

b. facilitating the grievance process, including, but not limited to, notifying the parties of grievance procedures, explaining the scope of confidentiality and assuring that the grievance moves forward in a timely manner;

c. assigning grievance cases to panels and teams of investigators;

d. designating a member of the committee to perform the panel chair's responsibilities if, during a level-1 or level-2 proceeding, a panel chair becomes unable to perform those responsibilities;

e. coordinating investigations, hearings and mediation efforts;

f. delegating any or all of the Committee Chair's duties to the Committee Vice Chair in individual cases;

g. collecting official documents and audio recordings related to Committee grievance and dismissal for cause cases and ensuring that these are deposited in the permanent case file in the Committee archives.

The Committee Vice Chair shall perform the duties of the Committee Chair when the Committee Chair is unable to do so or as assigned by the Committee Chair.

The panel chairs shall perform such functions as are required by these procedures, including:

h. coordinating investigations, hearings and mediation efforts in a timely manner;

i. acting as hearing officers in level-2 hearings;

j. voting only in case of a tie.

A hearing officer shall be the panel chair of the panel to which a level-2 hearing is assigned and shall preside at the hearing and perform such functions as are required by procedures herein for a level-2 hearing.

C. Functions

In grievance cases, the Committee functions in accordance with the Laws of the Regents and this policy. The Committee shall have the authority to compose internal administrative rules consistent with regent laws and policy, the Faculty Senate Constitution and the Faculty Senate Bylaws.

IV. General Definitions and Procedural Requirements

A. General Definitions

The parties to a grievance (hereinafter "Parties") shall be the faculty member filing the grievance and the administrator(s) whose action or failure to take action is the basis for the grievance. If the administrative Party is the chancellor, the chancellor may designate another administrator to serve as the Party in her/his place.

The record of the case, as used in these procedures, shall include:

a. all documents provided to the level-2 panel;

b. audio recording(s) of the hearing(s);

c. the level-2 panel report(s)and the Parties' responses to the report(s);

d. all formal post-hearing communications, including the chancellor's and president's responses, if any, and the panel's reply, if any.

B. General Procedural Requirements

1. The Committee's review of grievances shall proceed as expeditiously as possible. Ordinarily, level-1 investigations shall be concluded and reports submitted to the Committee Chair within 90 calendar days after the filing of a grievance and level-2 hearings shall be concluded and recommendations made to the chancellor within 90 calendar days after the transmission of the level-1 panel report to the chair of the second panel.

2. Time limits within which grievance statements must be received by the Committee Chair shall only be extended as provided in VI.A.5. Other time limits specified in these procedures shall be met unless the Committee Chair or panel chair, as appropriate, should determine that good cause shown justifies an extension. Time limits not specified in these procedures shall be established by the Committee Chair or panel chair, as appropriate, with the goal of concluding the Committee's review in a timely manner and consistent with the time limits established herein.

3. Written notification, provided pursuant to these procedures, shall be deemed to have been received when any one of the following has occurred:

a. when delivered, if the notice is sent by personal delivery;

b. when acknowledged by signature on a receipt, if the notice is sent by certified or registered mail, return receipt requested, or by alternative delivery service, with signature required for delivery;

c. five (5) business days following the mailing date, if the notice is sent by United States Postal Service to the last address provided to the Committee Chair; or

d. five (5) business days following the shipping date, if the notice is sent by alternative delivery service to the last address provided to the Committee Chair.

4. In cases involving salary, promotion, non-reappointment and post-tenure review, the Committee shall not substitute its judgment about an individual's academic merit for that of other authorized committees and administrators. In cases involving faculty personnel decisions resulting from program discontinuance, the Committee shall not consider the validity of the program discontinuance decision. In all of the above cases, the Committee shall consider only whether proper procedures were followed in taking these personnel actions. In disciplinary matters, the Committee shall consider the merits of the matter before it as well as the process.

5. In all grievance cases, the faculty member shall bear the burden of proof by a preponderance of the evidence.

6. The Committee Chair shall provide a list of Committee members to the grievant. The grievant may request that specific Committee member(s) be excluded from participation in the grievance process, and shall provide a rationale for the request. The Committee Chair shall consider this information in selecting level-1 and level-2 panels for the case.

7. At any point in a grievance process, a grievant may withdraw the grievance and the case will be closed.

8. In order to provide for the expeditious review of grievances, faculty members and administrators shall cooperate by providing current contact information, by making themselves available during investigations and hearings as requested by the Committee and by providing relevant documents as requested by the Committee and the other Party. A failure to cooperate shall be documented and considered in the evaluation of the case.

9. In accordance with the confidentiality expected of the grievance process and as permitted by law, the Parties, the other participants in the grievance process and the Committee members shall maintain the confidentiality of the grievance proceeding.

10. Upon the request of the panel chair to the Committee Chair, the Committee advisory lawyer shall be made available to a panel for consultation at any point during the grievance process.

V. Mediation Principles and Procedures

Attempts should be made to resolve a grievance at the earliest stage in the grievance process. The settlement of a grievance through mediation may be accomplished using Committee mediators, using other University of Colorado mediation resources, such as ombuds offices, or using mediation resources from outside the university.

The Committee Chair shall encourage the Parties to engage in mediation after the determination of jurisdiction but before the initiation of a level-1 investigation, and after a level-1 investigation but before a level-2 hearing. At the discretion of the panel chair, mediation may occur during an investigation or hearing and the proceeding may be suspended temporarily while mediation occurs.

If the Parties agree to pursue mediation, the Committee Chair shall propose to the Parties a mediation process using Committee or other university resources and shall help the Parties agree upon a mediation process and a mediator. The Committee Chair may propose using mediation resources from outside the university. Reasonable costs of outside mediation shall be paid by the university.

If an accommodation satisfactory to the Parties is achieved by mediation, the Parties shall enter into a written settlement agreement. Upon reaching a settlement agreement, the Parties shall report to the Committee Chair that a settlement has been reached, and the Committee Chair shall close the case.

The Parties are expected to maintain the confidentiality of the mediation process. At the beginning of the mediation process, the Parties shall be informed by the Committee Chair that communications made during the mediation process are confidential and shall sign a confidentiality agreement before the mediation begins. Committee mediators shall maintain the standard of confidentiality required of professional mediators and shall not be called to testify as a witness in university proceedings or in outside administrative or judicial proceedings.

Mediation shall be undertaken in an expeditious manner and shall not delay or extend the time limits described in these procedures unless the Parties and the Committee Chair or panel chair, as appropriate, agree.

VI. Level-1 Proceedings (First (1st) panel)

A. The Grievance Statement

1. A grievance shall be initiated by a written grievance statement submitted to the Committee Chair. Faculty members are encouraged to contact the Committee Chair prior to submitting the grievance statement.

2. In cases involving promotion, tenure, or non-reappointment, grievance statements shall be received by the Committee Chair within 60 calendar days following the faculty member's receipt of written notification of final action by the chancellor or other person with final administrative authority over the matter at issue.

3. In cases involving suspension and other disciplinary actions, excluding dismissal for cause, grievance statements must be received by the Committee Chair within 30 calendar days after the faculty member's receipt of written notification of the action.

4. In cases of other alleged violations of academic rights or privileges, grievance statements must be received by the Committee Chair within 30 calendar days after the faculty member is advised of the administrative action or decision, which is the basis of the complaint.

5. The time for filing may be extended by the Committee Chair for up to an additional 60 calendar days if the faculty member is not reasonably able to file the grievance within the prescribed period. Verification of the faculty member's inability to file may be required.

6. The grievance statement shall:

a. describe the alleged violation(s) of the grievant's academic rights, privileges or tenure;

b. provide a statement as to whether this matter or a related matter has been previously considered by the committee in a grievance proceeding;

c. provide a summary of the case, including relevant background information and attached available supporting documentation, arranged chronologically with a table of contents;

d. provide a statement by the grievant as to whether the involvement of a Committee member with a diverse perspective relevant to the claim is desired; and

e. provide a statement, which specifies what administrative action is expected to provide relief from the alleged grievance.

B. Determination of Jurisdiction

1. The Committee Chair shall make an initial determination as to whether the grievance is within the Committee's jurisdiction as described in III.A. above. In addition to determining jurisdiction on other grounds, the Committee Chair may determine that a grievance is not within the jurisdiction of the Committee on the grounds that the substance of the grievance has been reviewed for the same faculty member in a prior Committee grievance proceeding.

2. The Committee Chair shall make this determination of jurisdiction within 10 business days of receipt of the grievance statement.

3. If the Committee Chair determines that a grievance is not within the jurisdiction of the Committee, the faculty member shall be notified and shall be provided an opportunity to request review of the Committee Chair's determination, as described below in VI.B.6.

4. If the Committee Chair or the review panel determines that the grievance is within the jurisdiction of the Committee and if the Parties do not agree to mediation or if mediation is not successful, the Committee Chair shall assign the case to a level-1 investigation.

5. If, during the grievance process, the grievant presents additional grievance(s) not previously filed with the Committee, the Committee Chair shall first decide whether such additional grievances have a sufficiently close and substantial relationship to the current grievance to justify inclusion in that grievance. If the Committee Chair does not find such a close and substantial relationship, the Committee Chair shall not authorize the grievant to add such new grievance(s). The Committee Chair's decision can be reviewed as described below in VI.B.6. The grievant shall also have the option of submitting a new grievance.

6. In cases where the Committee Chair has determined that a matter is not within the

jurisdiction of the Committee or that additional grievances may not be included in the original grievance, the Committee Chair's decision can be reviewed at the request of the grievant. Such request for review shall be in writing and submitted to the Committee Chair within 10 business days of the grievant's receipt of notification of the Committee Chair's decision. If the grievant should request review, the Committee Chair's determination shall be reviewed by a review panel consisting of the Committee Vice Chair and the panel chairs. The decision of the review panel shall ordinarily be made within 10 business days of the review panel's receipt of a request for review and shall be final.

C. Conducting Level-1 Investigations (First (1st) Panel)

1. The purpose of a level-1 investigation is to establish whether or not reasonable grounds exist for believing that a violation of the academic rights, privileges or tenure of the grievant may have occurred.

2. The Committee Chair shall assign each grievance to an investigative panel. If, for any reason, panel members recuse themselves or are unavailable, or if a panel decides that one or more of its assigned members should not participate in the case assigned to the panel, or if the Committee Chair decides to exclude a panel member at the grievant's request, the Committee Chair may assign replacement members from another panel. When expertise is available on one panel that may facilitate an investigation assigned to another panel, the Committee Chair may assign the Committee member with the expertise to serve on the latter panel on a one-time basis. In cases where the grievance statement includes a request for the inclusion of diverse perspectives, the Committee Chair shall, when such a perspective is available on the Committee, appoint an appropriate member of the Committee to the panel.

3. The Committee Chair shall select two investigators to investigate the grievance for the panel. One of the investigators shall be a member of the Committee. The other may be from outside the Committee but shall have training, qualifications and experience as will, in the judgment of the Committee Chair, facilitate the investigation. Ordinarily, the outside investigator should have prior investigative experience. The assignment of an outside investigator shall be made by the Committee Chair on a case-by-case basis as the Committee Chair deems necessary to facilitate the grievance process. The outside investigator may be compensated and shall not participate in the deliberations of the panel or have a vote.

4. Copies of the grievance statement, along with the Committee's grievance procedures, shall be sent to the Parties, the chancellor, the panel chair and the assigned investigators.

5. The assigned investigators shall investigate the case and provide a draft of a level-1 panel report on the case to the panel chair. The level-1 panel report shall include:

a. the grievance statement;

b. a list of witnesses interviewed;

c. factual findings, including the bases for the findings and references to relevant documents or witness statements;

d. conclusion(s) as to whether there are reasonable grounds for believing that a violation of academic rights, privileges or tenure may have occurred, and a rationale for the conclusion(s);

e. recommendations for resolution of those alleged grievances for which reasonable grounds

are found to exist; and

f. appendices containing documents referred to in the report and not attached to the grievance statement.

6. The panel chair shall distribute copies of the draft report to the panel members for review, discussion and vote. The panel may reject the draft report and require additional investigation, modify the draft report, or approve the report as is. Upon the panel's approval of the draft report, the panel chair shall send the level-1 panel report to the Committee Chair. Ordinarily, the panel shall approve the report and transmit it to the Committee Chair within 15 days of the panel chair's receipt of the draft report from the investigators. The Committee Chair shall forward copies of the approved level-1 panel report to the Parties and the chancellor.

7. If the panel determines that there are not reasonable grounds for believing that a violation of the academic rights, privileges or tenure of the grievant may have occurred, the Committee Chair shall terminate the grievance proceedings, close the case and so notify the Parties and the chancellor.

8. If the panel determines that there are reasonable grounds for believing that a violation of the academic rights, privileges or tenure of the grievant may have occurred with respect to one or more of the allegations in the grievance statement, the Committee Chair shall request a response from the chancellor.

9. Upon motion of either Party, and upon agreement of both Parties, the panel may close the case.

D. Post-investigation Procedures for Level-1 Proceedings

1. Within 10 business days after receipt of the level-1 panel report finding reasonable grounds, the chancellor shall inform the Committee Chair in writing of any proposed actions to resolve the grievance and the reasons for such. The Committee Chair shall consult with the grievant to determine whether, in the grievant's view, such proposed action would satisfactorily resolve the grievance. The grievant shall respond to the chancellor's proposed action(s) within 10 business days of the date the grievant is informed of the proposal.

2. If the grievant determines that the chancellor's proposed action would satisfactorily resolve the grievance, the case shall be closed upon the chancellor's taking the proposed action.

3. If the grievant does not agree that the chancellor's proposed action would be adequate, the Committee Chair shall refer the matter to the level-1 investigative panel for reconsideration by the panel in light of the chancellor's proposed action. If the panel then determines that the chancellor's proposed action is adequate to resolve the grievance, the chancellor and the Parties shall be so advised. The grievance proceedings shall be terminated, and the case shall be closed upon the chancellor's taking the proposed action.

4. If the chancellor fails to respond within 10 business days or responds that he/she intends to take no action, or if the panel, upon reconsideration, determines that further action other than that proposed by the chancellor is warranted, the Committee Chair shall transmit a copy of the level-1 panel report to the chair of a second panel for a level-2 hearing, and shall so notify the Parties and the chancellor. The level-1 panel report shall not be distributed to other members of the second panel, since those members are required to receive information about the grievance through the level-2 proceedings described below.

5. If the chancellor proposes to take action, the time between the grievant's response and either the closing of the case or referral to a level-2 hearing shall be no more than 15 business days. If the chancellor does not propose to take action or fails to respond to the panel report within 10 business days, the time between the chancellor's receipt of the level-1 panel report and referral to a level-2 hearing shall be no more than 15 business days.

VII. Level-2 Proceedings (Second (2nd) panel)

A. Election of an Informal or Formal Hearing

1. A grievant may elect to have either an informal or a formal hearing.

2. Following are the differences between informal and formal hearings:

a. Procedures applicable only to informal hearings:

i. Neither Party shall be represented by counsel or other spokesperson.

ii. Only the following persons may be present at the hearing:

1. the members of the panel;

2. the hearing officer;

3. the Parties;

4. the Committee advisory lawyer;

5. a witness, only during the time he/she is giving testimony.

b. Procedures applicable only to formal hearings:

i. Upon receipt of the grievant's election of a formal hearing, the Committee Chair shall notify university counsel of that election as well as the Parties and the chancellor.

ii. Each Party may be represented by counsel, who may act on the Party's behalf throughout the formal hearing proceeding. To the extent that a Party is permitted to take, or is prohibited from taking, an action, the Party's counsel is likewise permitted to take, or prohibited from taking, such action on the Party's behalf.

iii. Only the following persons may be present at the hearing:

1. the members of the panel;

2. the hearing officer;

3. the Parties and their counsel;

4. the Committee advisory lawyer;

5. a witness, only during the time he/she is giving testimony.

3. Within five (5) business days after receiving notice of the transmittal of the grievance to a

second panel chair for a level-2 hearing, a grievant shall notify the Committee Chair in writing whether he/she has elected an informal or a formal hearing. If the grievant fails to so notify, the grievant shall be assumed to have elected an informal hearing.

4. Upon receipt of the grievant's election of a formal or an informal hearing (or default to an informal hearing), the Committee Chair shall notify the Parties and the chancellor whether the hearing will be informal or formal. The Committee Chair shall send copies of the Committee's grievance procedures, if not already provided, to the Parties, the chancellor, and the panel members.

B. Conducting Level-2 Proceedings

1. The panel chair is the hearing officer and shall preside at the hearing.

2. The hearing officer, in consultation with the Parties, shall set all hearing dates and times and shall notify the Parties. Ordinarily, the date set by the hearing officer for the commencement of the hearing shall be within 30 business days after the date that the level-1 panel report is transmitted to the chair of the hearing panel. Once the date for the hearing has been set, the hearing shall not be continued or delayed except for good cause shown. The hearing officer shall have the authority to change any hearing date or time previously set, and shall have all such other authority as is necessary and proper for the fair and expeditious conduct of the business of the panel.

3. Except in extraordinary circumstances, formal and informal hearings shall be limited to two consecutive days, ordinarily one day for each Party.

4. The hearing officer or any panel member may recuse her/himself at any time by notifying the Committee Chair of the reason for the recusal. Upon motion by either Party or upon motion of a panel member, the panel may decide that the hearing officer or a panel member should not participate in the hearing. In such an event, the Committee Chair shall designate a new hearing officer or, if there is less than a quorum of the panel, designate a new panel member, respectively.

5. There shall be no formal discovery as is ordinarily defined by judicial process for either an informal or formal hearing. Specifically, the hearing officer shall not compel depositions, interrogatories, requests for production of documents, or requests for admissions. There shall be an opportunity for the exchange of relevant documentation, as reasonably requested by the Parties from each other.

6. In order to provide guidance for both informal and formal hearings, the hearing officer, in consultation with the Parties, shall develop a hearing order at the earliest practicable time. In order to assist in the development of the hearing order, the hearing officer may call for a meeting with the Parties. The hearing order shall be distributed to the Parties and the panel members no less than 10 business days prior to the commencement of a hearing. The hearing order should contain the following:

a. a concise statement of the grievant's allegations for which reasonable grounds have been found to exist, including:

i. the particular administrative action(s) or inaction(s) alleged to have violated the grievant's rights;

ii. the reasons why said administrative action(s) or inaction(s) is alleged to have violated the grievant's rights; and

iii. the relief to which the grievant believes her/himself to be entitled;

b. a concise statement of the other Party's response to the allegations at issue;

c. a brief statement of the issues to be considered at the hearing;

d. a list of the documentary and demonstrative evidence that each Party intends to present;

e. a list of the witnesses to be presented by each Party;

f. a statement of the order in which witnesses shall be presented at the hearing; and

g. such additional information as the hearing officer may deem appropriate.

7. Guidelines for evidence:

a. Affidavits may be introduced in lieu of witness testimony, if the hearing officer concludes that the witness is not otherwise available to testify, either in person or by videoconference or teleconference. It is understood that affidavits may be given less weight than witness testimony because there is no opportunity for questioning by the Parties or members of the panel.

b. The hearing officer shall determine the admissibility of evidence. Evidence not ordinarily admissible in court may be admitted, at the discretion of the hearing officer, if he/she determines the evidence to be of such reliability and relevance that a reasonable person would base weighty decisions upon it.

8. The hearing officer shall appoint a recording member from the membership of the panel. The recording member shall be responsible for recording the panel hearings. At the conclusion of the hearing, copies of the recordings shall be made available to the hearing panel as requested by panel members for their deliberations; they shall also be made available to a Party upon the Party's request to the hearing officer.

9. Each Party shall have the right to present witnesses, including expert witnesses, and to be present throughout the hearing. If, after proper notification of the hearing dates, either Party fails to be present during all or any part of a hearing, the hearing may go forward in the absence of that Party.

10. The Parties and the members of the panel shall have the opportunity to question witnesses, subject to such reasonable limitations as the hearing officer may impose. Witness testimony may be presented by videoconferencing or teleconferencing, so long as both Parties and the panel members are able to participate concurrently.

11. Neither Party shall discuss the case, except for matters relating to the coordination of the proceedings, with the hearing officer, other members of the panel or the Committee advisory lawyer unless both Parties are present. Neither Party shall communicate in writing concerning the case with the hearing officer, other panel members, or the Committee's advisory lawyer unless a copy of said communication is sent to the other Party.

12. The hearing officer may permit opening, closing, and other oral arguments to be made to the panel. Each Party may submit a written argument to the panel within five (5) business days after the end of the hearing, provided that the Party indicates her/his intentions to do so at the time of the hearing. The submitting Party shall serve the other Party with a copy of written arguments.

13. The hearing officer may seek the advice of the panel with respect to any ruling or decision the hearing officer makes.

14. At the request of the hearing officer, the Committee advisory lawyer shall be present for the duration of the hearing for purposes of providing legal advice as needed to the hearing officer and panel.

15. By agreement of both Parties and the panel, the hearing procedures may be modified or waived in part. Such agreement shall be made, whenever reasonably possible, after consultation with the Committee Chair.

C. Post-hearing Procedures for Level-2 Proceedings

1. After the hearing has been completed, the members of the panel shall meet and deliberate. No person other than members of the panel may be present at this meeting, except that, upon the request of the majority of the panel members, the Committee advisory lawyer may be present to be consulted concerning questions of law. In due course, ordinarily within 30 business days after the conclusion of the hearing, the panel shall promulgate findings of fact and conclusions, and, where appropriate, recommendations to the chancellor consistent with the laws and policies of the Board of Regents. These findings, conclusions and recommendations shall be in a written report (hereinafter called the "level-2 panel report"), which shall include an explanation of the panel's findings, conclusions and recommendations. Service of the Committee advisory lawyer may be utilized in the preparation of the level-2 panel report. Any member of the panel not in agreement with any aspect of the level-2 panel report may indicate the disagreement, along with the reasons therefor, in a minority report, which shall be appended to the level-2 panel report. The panel chair shall send the level-2 panel report(s) to the Committee Chair, who shall forward copies to the Parties.

2. The Parties may respond in writing to the level-2 panel report(s), setting forth any objections to either the findings or recommendations contained in the level-2 panel report(s). A Party's response must be received by the panel chair within 10 business days after the Party's receipt of the level-2 panel report(s). Copies of the Party's response shall be sent to the other Parties; however, the Parties shall not have an opportunity to reply to each other's responses. Upon receiving these responses, the panel may choose to modify or supplement its report(s). If neither Party responds to the level-2 panel report(s) within the required period, the panel chair shall so advise the Committee Chair.

3. The panel chair shall transmit the record of the case (which includes the level-2 panel report) to the Committee Chair, who shall forward a copy to the chancellor.

4. The chancellor shall respond in writing to the level-2 panel report(s) within 10 business days after receipt of the report(s). The chancellor's response shall address each of the stated recommendations in the level-2 panel report(s), indicating what action the chancellor intends to take in response to the recommendations and an explanation for such action. The

Committee Chair shall advise the panel and the grievant of the chancellor's response. The panel shall thereafter determine whether, in its judgment, the chancellor's response satisfactorily addresses the panel's recommendations. If so, the Committee Chair shall so inform the chancellor and the grievant in writing and close the case.

5. If the panel concludes that all or part of the chancellor's response does not satisfactorily address the panel's recommendations, the Committee Chair shall in writing inform the chancellor and the grievant of the panel's disagreement and the reasons therefor. If, after further consultation between the Committee Chair and the chancellor, the disagreement is not resolved to the panel's satisfaction, the Committee Chair shall in writing report the disagreement and the basis thereof to the president, with a copy to the grievant, and shall forward a copy of the record of the case to the president. If, after 10 business days, the disagreement is not resolved to the panel's satisfaction by consultation between the Committee Chair and the president, copies of the record of the case shall be transmitted by the Committee Chair to the Board of Regents for its review.

6. If the Board of Regents should decide to review the matter, the board shall undertake the review in executive session. The panel hearing officer shall accompany the Faculty Council chair to represent the findings and recommendations of the panel to the Board of Regents. If the Board of Regents decides not to review the matter, the president's decision stands.

III. Changes to Grievance Procedures

Changes to these procedures require:

1. notice of motion to the Faculty Senate;

2. approval by a two-thirds majority of those voting at the Faculty Senate meeting following the notice of motion; and

3. approval by the Board of Regents.

Supersedes: Rules of the Faculty Senate (1978); "Panel Procedures for Processing Cases--University Committee on Privilege and Tenure" (RA 12/16/76 and subsequent amendments

Last Amended: December 19, 2002

History:

Adopted December 19, 2002

Groups audience:
Board of Regents
OG vocabulary:
Regent Policies

Source URL: http://www.cu.edu/regents/policy-5h-faculty-senate-grievance-process

Links:
[1] http://www.cu.edu/regents/policy-5h-faculty-senate-grievance-process