Section II: The Faculty Senate [1]

II.A Membership and Organization

1. The President of the University (hereinafter "President") shall serve as the President of the Faculty Senate.
2. The chair of Faculty Council (hereinafter "Faculty Council Chair") shall be the vice-president of the Faculty Senate.
3. The vice chair of the Faculty Council (hereinafter "Faculty Council Vice Chair") shall be the parliamentarian of the Faculty Senate.

II.B Meetings and Quorum

1. The Faculty Senate shall meet once in the fall semester and once in the spring semester and under such other conditions as are specified in the Constitution.
2. Meeting dates and times for the fall semester and spring semester meetings shall be set by the Faculty Council Chair in consultation with Faculty Council members and the President.
3. The vice-president of the Faculty Senate shall preside at meetings of the Faculty Senate.
4. At all regular meetings of the Faculty Senate, the following items of business shall be on the agenda:
    a. announcement of approval of the minutes of the preceding Faculty Senate meeting. (Minutes are available from the Faculty Council Office);
    b. unfinished business;
    c. President's report;
    d. reports of special committees;
    e. report of the Faculty Council;
    f. reports of Faculty Senate committee(s) and Faculty Council committees;
    g. new business;
    h. question period. All members of the Faculty Senate are entitled to ask questions.

5. The quorum for the Faculty Senate is established in the Constitution.

II.C Functions

II.C.1 Functions of Faculty Senate Meetings

II.C.2 Procedures

1. On substantive matters of new business brought to the Faculty Senate, written notice of

motion or resolution shall be delivered to the Faculty Council Chair and the Faculty Council Office such that it shall be published through official University communication medial or otherwise distributed to the Faculty Senate at least 72 hours in advance of a Faculty Senate meeting.
2. Changes in Privilege and Tenure Committee grievance procedures shall follow the procedures for amendments to Faculty Senate bylaws. These procedures are described in Section VIII.B.1.
3. Reports forwarded from the Faculty Senate to the President, other administrative officials, or the Board of Regents must first be approved by the Faculty Senate. Faculty Senate members shall be notified 72 hours in advance of discussion and copies of the report shall be made available.

II.C.3 Mail Ballots

II.C.4 Initiative

II.C.5 Referendum

II.D Faculty Senate Standing Committee(s)

II.D.1. Privilege and Tenure Committee (P & T Committee) [Click here to see corresponding section of the Constitution] [2]

II.D.1.a Definitions of Tenure, Privileges and Rights of Faculty

II.D.1.b Membership and Organization [Click here to see corresponding section of the Constitution] [3]

II.D.1.b.1 Membership

II.D.1.b.1 (a) Members

1. Investigator members of the Privilege and Tenure Committee (hereinafter "Committee") shall be members of the Faculty Senate. Investigator vacancies on the Committee shall be filled by selection procedures administered by faculty assemblies. Selections shall be approved by Faculty Council.

2. Mediator members of the Committee shall be members of the Faculty Senate. Mediator vacancies on the Committee shall be filled as follows: The Committee shall solicit nominations from faculty assemblies and may include retired faculty members. Nominations shall be provided by faculty assemblies, according to their procedures, to the Executive Committee. The Executive Committee shall determine which of the nominees shall receive university-provided or -funded mediation training. Upon successful completion of mediation training, the nominees' names shall be submitted for approval by Faculty Council.

3. Members shall serve three-year renewable terms, and terms shall be staggered on each campus. Selection of new members shall ordinarily take place in the spring semester.

4. If a member resigns during a term, or becomes otherwise ineligible to serve, a replacement member shall be designated by the relevant campus faculty assembly, subject to approval by Faculty Council. A replacement member shall serve out the

original member's term.

5. When Committee members are on sabbatical or otherwise temporarily unable to serve, a temporary substitute, preferably with prior Committee experience, shall be designated by the relevant campus faculty assembly subject to approval by the Faculty Council.

6. The Committee Chair may add a panel during a senate year and request that new members be selected as needed.

7. Members of the Committee may become ineligible to serve if they have three consecutive unexcused absences from meetings of the Committee. The Executive Committee of the Committee shall be responsible for determining whether a member has become ineligible, for notifying the member after the second unexcused absence of impending ineligibility, and, following a third unexcused absence, if the member is determined to be ineligible, for notifying the faculty assembly from which the member comes of the necessity for a replacement.

8. The Committee shall have no more than three members who are concurrently members of the Faculty Council. No Committee member may concurrently serve as an officer of Faculty Council.

9. Committee members shall be as impartial and as reasonable as possible in the performance of their responsibilities.

II.D.1.b.1 (b) Officers and Panel Chairs

1. The Committee shall annually elect a chair (hereinafter "Committee Chair"), a vice chair (hereinafter "Committee Vice Chair"), a secretary (hereinafter "Committee Secretary"), and panel chairs. In order to be elected as an officer of the committee, a nominee shall receive the affirmative votes of a majority of those attending a meeting at which a quorum is present.

2. Each fall semester, the Committee shall elect the Committee Chair for the next Senate year. Each spring semester, the Committee shall elect the Committee Vice Chair, Committee Secretary, and panel chairs for the next Senate year.

3. As stated in the Constitution, the Committee Chair shall be a voting member of the Faculty Council.

4. The Committee Chair shall be the spokesperson for the Committee. The Committee Chair shall perform such functions as are required by the grievance and dismissal for cause procedures and by internal administrative rules, including:
    a. calling and presiding over meetings of the Committee;
    b. acting as the liaison between the Committee and all parties in a grievance;
    c. 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;
    d. determining the number of panels required for the senate year and assigning members to panels;
    e. assigning grievance cases to panels and teams of investigators;

   f. 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;
   g. coordinating investigations, hearings and mediation efforts;
   h. arranging training for committee members;
   i. delegating any or all of the Committee Chair's duties to the Committee Vice Chair in individual cases;
   j. submitting annual written reports and other reports to the Faculty Council on behalf of the Committee;
   k. informing relevant campus assembly chairs of Committee representational needs and requesting that they recruit new members to meet those representational needs;
   l. 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.

5. The Committee Chair shall not serve as a panel chair nor vote on panel reports or recommendations.

6. 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.

7. The Committee Secretary shall:
   a. audio record committee meetings and arrange for preservation of meeting minutes in the Faculty Council Office;
   b. oversee preparation and distribution of minutes to Committee members;
   c. run the elections of officers.

8. The panel chairs shall perform such functions as are required by these procedures, including:
   a. coordinating investigations, hearings and mediation efforts in a timely manner;
   b. acting as hearing officers in level-2 hearings;
   c. voting only in case of a tie.

9. A Committee officer or panel chair may be recalled by a two-thirds majority vote at a Committee meeting at which a quorum is present. A Committee officer or panel chair subject to a recall action shall be given the opportunity to be heard by the Committee prior to the recall vote.

II.D.1.b.1 (c) Executive Committee

1. The Executive Committee of the Committee shall be composed of the Committee officers and panel chairs.
2. The Committee Chair shall serve as the chair of the Executive Committee and vote only in case of a tie.
3. The Executive Committee shall:
   a. facilitate the proper functioning of the Committee;
   b. set the Committee agenda for the senate year;
   c. appoint Committee mediators;
   d. decide on issues of member ineligibility.

II.D.1.b.1 (d) Investigators

1. 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.

II.D.1.b.1(e) Mediators

1. Members of the Committee who are 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.
2. 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.
3. Committee mediators shall not be present during committee discussions of grievances or participate in investigations or hearings.

II.D.1.b.2 Organization

II.D.1.b.2 (a) Panels

1. A panel shall consist of five (5) members who serve as investigators and a chair, who shall be the presiding officer of the panel.
2. A quorum of the panel for the purpose of conducting business shall be three investigator members and the panel chair.
3. A dismissal for cause panel shall be a separate panel and shall be appointed by the Committee Chair for the primary purpose of hearing dismissal for cause cases.
4. The number of panels for each senate year shall be determined by the Committee Chair.

II.D.1.b.2 (b) Subcommittees

1. The Committee is authorized to create appropriate subcommittees.

II.D.1.b.2 (c) Administrative Rules

1. The Committee shall have the authority to compose internal administrative rules consistent with regent laws and policies, the Constitution and these Bylaws.

II.D.1.c Meetings and Quorum [Click here to see corresponding section of the Constitution] [4]

1. Committee meeting dates and times shall be set by the Committee Chair in consultation with Committee members.

2. Members of the Committee who travel in connection with Committee service shall be provided mileage allowances at university rates.

3. On substantive matters of new business, written notice of motion or resolution shall be delivered to the Committee Chair such that it can be distributed to the Committee at

least 72 hours in advance of a Committee meeting which shall call for a vote on that motion.

4. Absentee voting shall not be permitted. Tele- and video-conference votes shall be permitted. In urgent circumstances, when a decision is required before the next scheduled meeting, the Committee may conduct electronic voting if all other bylaws concerning notice of motion have been satisfied.

5. At its regular meetings, the Committee shall, as appropriate:
    a. designate member(s) to serve on each of its subcommittees;
    b. elect officers and panel chairs;
    c. review the status of, and issues raised by, cases and repeated complaints; and
    d. prepare and approve motions and resolutions for recommendations to the Faculty Senate, as required by the Constitution.

6. At each spring semester meeting, the Committee shall assess the number of vacancies as well as the representation of campuses and diversity of Committee membership.

7. The meetings of the Committee shall be closed to all except committee members and invited guests, because these concern confidential personnel matters.

II.D.1.d Functions [Click here to see corresponding section of the Constitution] [4]

1. 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.

2. Recommendations made to the Faculty Council by the Committee shall first be approved by the Committee. Ordinarily, such recommendations should be distributed to Committee members at least 72 hours in advance of discussion and vote at a meeting of the Committee. Approved Committee recommendations shall be forwarded by the Committee Chair to the chair of the Faculty Council for appropriate referral.

II.D.1.e Grievance Procedures [Click here to see corresponding section of the Constitution] [4]

II.D.1.e.1 General Definitions and Procedural Requirements Applicable to Grievances

II.D.1.e.1 (a) General Definitions

1. The parties to a grievance (hereinafter "Parties") shall be the faculty member filing the grievance and the administrator(s) or other party 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.

2. The record of the case as used in these procedures shall include:
    a. all documents provided to the level-2 panel;
    b. audio recordings of the hearings;
    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.

3. The parties to, and the record of, a contemplated dismissal for cause case are described below at II.D.1.e.5.

II.D.1.e.1 (b) General Procedural Requirements Applicable to Grievances

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 II.D.1.e.3(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 or other forms of University communication, 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 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.

II.D.1.e.2 Mediation

II.D.1.e.2 (a) Mediation Principles and Procedures

1. Attempts should be made to resolve a grievance at the earliest stage in the grievance process.

2. 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.

3. 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.

4. 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.

5. 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.

6. The Committee Chair may propose using mediation resources from outside the university.

7. Reasonable costs of outside mediation shall be paid by the university.

8. 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.

9. 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.

10. 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.

11. 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.

II.D.1.e.3 Level-1 Proceedings (First (1st) panel)

II.D.1.e.3 (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. Dismissal for cause cases shall be initiated as described in section II.D.1.e.5(a).1.

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 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.

II.D.1.e.3 (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 the Laws of the Regents, regent policies and the Constitution. 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 II.D.1.e.3(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 II.D.1.e.(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.

II.D.1.e.3 (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 nor 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 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 and 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.

II.D.1.e.3(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.

II.D.1.e.4 Level-2 Proceedings (Second (2nd) panel)

II.D.1.e.4(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.

II.D.1.e.4(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 (or the notice of intent to dismiss in a dismissal for cause case) 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 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 video conference 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 hearing. 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.

II.D.1.e.4(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.

II.D.1.e.5 Dismissal for Cause Hearings

II.D.1.e.5 (a) General Definitions Applicable to Dismissal for Cause

1. The parties to a contemplated dismissal for cause case (hereinafter, "Parties") shall be the chancellor or the administrator authorized by the chancellor to issue the notice of intent to dismiss the faculty member and the faculty member to whom the notice was issued. If the chancellor issues the notice of intent to dismiss, the chancellor may designate another administrator to serve as the Party in her/his place.

2. The record of the case for a dismissal for cause shall include:
    a. all documents provided to the dismissal for cause panel;
    b. a transcript of the hearing;
    c. the dismissal for cause panel report(s) and the Parties responses to the report(s);
    d. all formal post-hearing communications, including the President's response, if any, and the panel's reply, if any.

II.D.1.e.5 (b) General Procedural Requirements Applicable to Dismissal for Cause

1. The Committee's review of dismissals for cause shall proceed as expeditiously as possible. Ordinarily, hearings shall be concluded and recommendations made to the President within 90 calendar days after referral to the dismissal for cause panel by the Committee Chair.

2. The time limit within which the faculty member must request referral from the President or chancellor may not be extended. Other time limits specified in Sections II.D.1.e.5(b)-(e) of 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 the same as that described for grievances in Section II.D.1.e.1(b)3.

4. In order to provide for the expeditious review of dismissals for cause, faculty members and administrators shall cooperate by providing current contact information, by making themselves available during hearings as requested by the Committee and by providing relevant documents as requested by the Committee and the other Party.

5. In accordance with the confidentiality expected of the dismissal for cause process and as permitted by law, the dismissal for cause panel members shall maintain the confidentiality of the proceeding.

6. 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 process.

II.D.1.e.5(c) Commencement of Dismissal for Cause Proceedings

1. As provided in the Laws of the Regents, a dismissal for cause proceeding shall be initiated by the issuance to a faculty member of a written notice of intent to dismiss. The

notice of intent to dismiss shall be issued by the chancellor or the administrator authorized by the chancellor to issue the notice.

2. A faculty member who has received written notification of an intent to dismiss may request, within 10 business days of receipt of said notice, that the President or chancellor refer the matter to the Committee.

3. The President or chancellor shall refer the matter to the Committee Chair within three (3) business days of receipt of request for referral. The Committee Chair shall notify the Parties and the chancellor that he/she has received the contemplated dismissal for cause case.

4. Within five (5) business days after referral of the matter to the Committee Chair, the chancellor shall provide the Committee Chair with a copy of the notice of intent to dismiss, including its attached documentation.

5. The faculty member may respond to the notice of intent to dismiss. If the faculty member elects to respond, the response shall be provided to the Committee Chair no later than 20 business days after receipt of the notice of intent to dismiss.

6. In contemplated dismissal for cause cases, the Committee process begins with a hearing, which can be formal or informal.

II.D.1.e.5(d) Conducting Dismissal for Cause Hearings

1. Upon receipt of the dismissal for cause case, the Committee Chair will ask the Parties to elect an informal or a formal hearing. The hearing shall be informal unless either Party elects a formal hearing in writing within 15 business days of the request from the Committee Chair. In the event that either Party elects a formal hearing, the university shall contribute up to $20,000 of the reasonable fee of an attorney for services directly related to the representation of the faculty member in a dismissal for cause case, so as to facilitate the proceeding and to ensure that the faculty member's case is effectively presented.** (**This $20,000 is not currently available to grievants. By resolution, the Board of Regents of the University of Colorado has decided not to implement this provision until the Colorado Attorney General advises that the provision is in compliance with the constitution, statutes, and rules of the State.) Invoices shall be submitted to the Committee Chair for determination of the amount of reasonable attorney fees to be paid.

2. The Committee Chair shall notify the Parties and university counsel whether the hearing will be informal or formal.

3. The Committee Chair shall assign a contemplated dismissal for cause case to a dismissal for cause panel, whose primary responsibility shall be the hearing of such cases. If the dismissal for cause panel is not available for a timely hearing because of other cases, the Committee Chair shall assign the case to another panel, which shall sit as a dismissal for cause panel.

4. The Committee Chair shall provide a list of committee members, including the dismissal for cause panel members, to the faculty member. The faculty member may request that specific committee member(s) be excluded from the dismissal for cause panel and shall

provide a rationale for the request. The Committee Chair shall consider this information and may replace the dismissal for cause panel member(s).

5. The Committee Chair shall send copies of the Committee's dismissal for cause procedures, if not already provided, to the Parties and the panel members.

6. The Committee Chair shall forward copies of the notice of intent to dismiss and any response by the faculty member to the panel chair and the panel members. The panel chair shall use this documentation to assist in the preparation of the hearing order.

7. In cases of contemplated dismissal for cause, the dismissal for cause panel shall evaluate the allegations underlying the notice of intent to dismiss.

8. A dismissal for cause hearing proceeds in the same manner as a level-2 grievance hearing (described in Sections II.D.1.e.4(a) and (b)), with the following exceptions:
    a. The administration shall bear the burden of proof by clear and convincing evidence and shall present its case first.
    b. The hearing order shall contain the notice of intent to dismiss and its supporting documentation and the faculty member's response, if any.
    c. A registered professional reporter shall be present at the hearing to record the panel hearing. A transcript of the hearing shall be prepared and shall be included with the record of the case.

II.D.1.e.5(e) Post-hearing Procedures for Dismissal for Cause 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 dismissal for cause panel shall issue a written report containing findings of fact, conclusions, and recommendations consistent with the laws and policies of the Board of Regents. 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 this panel report may indicate disagreement, along with the reasons therefor, in a minority report, which shall be appended to the panel report. Copies of the dismissal for cause panel report(s) and any subsequent communications shall be sent to the Parties.

2. The Parties may respond in writing to the dismissal for cause panel report(s), setting forth any objections to either the findings or recommendations contained in the report. A Party's response must be received by the hearing officer within 10 business days after the Party's receipt of the dismissal for cause 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).

3. Copies of the record of the case shall be forwarded by the hearing officer to the President for review and a determination as to whether there are grounds for dismissal.

4. The President shall have 15 business days after receipt of the record of the case to

decide how to proceed.

5. If the President and dismissal for cause panel concur that there are grounds for dismissal, that decision and all supporting documentation, including copies of the record of the case, shall be forwarded to the Board of Regents by the President.

6. If the President determines that there are not grounds for dismissal, the case shall be closed.

7. If the President determines that there are grounds for dismissal and the panel does not concur, the President shall return the case, with explanatory comments, to the panel for reconsideration. Following reconsideration, but within 15 days of the panel's receipt of the President's response, a second panel report, addressing the President's response, shall be sent to the President, with a copy to the faculty member. After review thereof, if the President continues to find that there are grounds for dismissal, the President shall forward the President's recommendation, copies of the record of the case, and any subsequent written communication with the dismissal for cause panel to the Board of Regents.

8. In all cases where the President recommends dismissal, the Board of Regents shall provide the faculty member with an opportunity to be heard.

9. The dismissal for cause panel hearing officer or designee shall be the spokesperson for the dismissal for cause panel report(s) before the Board of Regents.

10. The Board of Regents shall arrive at a final decision on a dismissal for cause recommendation according to its procedures.

Attachments:
Video:
Images:
Groups audience:
Faculty Council

Source URL: https://www.cu.edu/faculty-council/laws/section-ii-faculty-senate

Links:
[1] https://www.cu.edu/faculty-council/laws/section-ii-faculty-senate
[2] https://www.cu.edu/faculty-council/faculty-senate-constitution
[3] https://www.cu.edu/faculty-council/article-ii-faculty-senate
[4] https://www.cu.edu/faculty-council/constitution/article-ii-faculty-senate