

## **2.18 Grievance and Mediation Policy and Procedures** (new policy adopted July 2011; revised September 2012)

### **2.18.1 Purpose of and General Information Pertaining to Mediation and the Grievance Process**

#### **2.18.1.1 Informal Resolution**

All problems or disputes should be resolved informally whenever possible. Open communication between all members of the campus community, and especially between administrators and faculty, is encouraged so that resort to formal mediation and grievance procedures will not be necessary.

#### **2.18.1.2 Mediation**

Mediation is a mechanism by which the University seeks to provide a resolution of grievable conflicts among its academic faculty members. Mediation can be requested by either party in a grievable conflict if the grievable conflict is not resolved informally.

#### **2.18.1.3 Grievance Process**

The purpose of the Grievance Procedure is to assure a rapid and fair process for the resolution of grievable conflicts which are not resolved through mediation. It shall be the responsibility of the University, through the Offices of the Provost and the President, to assure that the grievance procedures, review processes, and mediation provisions herein established are appropriately supported, respected, and enforced.

### **2.18.2 Resort to Other Procedures**

In recognition of the fact that the commitment of the University and the grievant to this process is necessary in order to achieve its designed objectives, if the grievant seeks resolution of the subject matter of a pending grievance in any forum or by any set of procedures other than those established in this section, except in cases where Federal and State law gives persons the right to institute action without first exhausting internal administrative remedies, the University shall be under no obligation to continue with the process outlined in this grievance procedure. This Grievance Procedure replaces and supersedes all grievance procedures found in department or college codes.

### **2.18.3 Relation of Grievance Procedure to Faculty Disciplinary Action Policy**

- a. Disciplinary action procedures are distinguished from grievance procedures in that disciplinary action is generally commenced against a tenure and tenure-track faculty member based on allegations that the faculty member has engaged in conduct prohibited by the Faculty Disciplinary Action Policy. Grievance procedures are initiated by a faculty member, typically against an administrator, who believes that he or she has suffered injury as the result of a violation of the faculty member's rights or privileges. A grievance complaint specifically requests the University to take appropriate action to eliminate or mitigate the faculty member's injury.
- b. The decisions reached under the Faculty Disciplinary Action Policy are final, except for the appeal procedure described in Section 2.16.15 of that policy.
- c. Failure to proceed through the procedures stipulated within the Faculty Disciplinary Action Policy prior to a decision to impose sanctions for tenured and probationary faculty conduct shall constitute grounds for a grievance complaint under Section 2.18 of the Faculty Handbook against the administrator(s) responsible for the decision to impose said sanctions.
- d. Grievances aimed at reversing the decision of a final appeal to impose sanctions under the Faculty Disciplinary Action Policy shall not be permitted under Section 2.18 of the Faculty Handbook.

- e. Allegations that specific provisions of this Faculty Disciplinary Action Policy were violated during disciplinary proceedings shall not constitute grounds for a grievance under Section 2.18 of the Faculty Handbook, but shall receive due consideration at the appeal level specified in Section 2.16.15 of the Faculty Disciplinary Action Policy.
- f. If the Provost recommends dismissal of a tenure or tenure-track faculty member under the Faculty Disciplinary Action Policy and the President concurs with the Provost's recommendation, the hearing conducted under Section 2.16.15 of the Faculty Disciplinary Action Policy shall serve the role of the Grievance Hearing Committee specified in Section 2.17.4 of the Dismissal Procedures. In these cases, the respondent shall maintain the right to appeal the President's decision to dismiss to the Board of Governors of the Colorado State University System in accordance with the provisions of Section 2.17.4.

#### **2.18.4 Relation of Grievance Procedure to Affirmative Action, Equal Opportunity and Non-Discrimination Policy**

- a. The Affirmative Action, Equal Opportunity and Non-Discrimination Policy is distinguished from the Grievance contained in Section 2.18 in that the Affirmative Action Board maintains responsibility for the development and implementation of policies and procedures related to affirmative action, equal opportunity, and nondiscrimination. (See Section 2.7.1.2 of the Faculty Handbook.)
- b. Internal University procedures appropriate for filing allegations of unlawful harassment, discrimination, or retaliation should be followed before any action is taken pursuant to the Grievance Process contained in Section 2.18. Information concerning these procedures is available from the office of the Director of AA/EEO.

#### **2.18.5 Relation of Grievance Procedure to Dismissal and Termination Procedures**

- a. Per the provisions of Section 2.17.4 (Dismissal), a Provost recommendation to dismiss tenured or probationary faculty is only allowed for one of the following reasons:
  - i. professional incompetence that is documented by a Cumulative Performance Review (see Section 2.9.3), and in spite of prior efforts at remediation of performance; in such cases, the faculty member is entitled to a Grievance Hearing Review under the provisions of Section 2.18.
  - ii. continuing record of neglect of duties or responsibilities or sustained record of deliberate violation of the rights of others, despite the imposition of sanctions and efforts at correction or remediation of conduct through the Faculty Disciplinary Action Policy; in such cases, a Faculty Disciplinary Action Review Hearing will be conducted under the provisions of Section 2.16.13 of the Faculty Disciplinary Action Policy.
  - iii. conduct which endangers the safety or well-being of the faculty member or other members of the University community, or which substantially impairs or substantially disrupts the normal functions of the University; in such cases, a Faculty Disciplinary Action Review Hearing will be conducted under the provisions of Section 2.16.13 of the Faculty Disciplinary Action Policy.
  - iv. conviction of a felony; in such cases, a Faculty Disciplinary Action Review Hearing will be conducted under the provisions of Section 2.16.13 of the Faculty Disciplinary Action Policy.
  - v. continued failure to meet reasonable written and published standards for performance or conduct contained in or incorporated by reference to this Faculty Handbook, despite

efforts at correction through the Annual Performance Review process (Section 2.9.1), the Cumulative Performance Review Process (Section 2.9.3), the Comprehensive Post-Tenure Review Process (Section 2.10.3.2), or the Faculty Disciplinary Action Procedure (Section 2.16). In cases related to conduct, a Faculty Disciplinary Action Review Hearing will be conducted (per the provisions of Section 2.16.13 of the Faculty Disciplinary Action Policy). In all other cases, the faculty member is entitled to a Grievance Hearing Review under the provisions of Section 2.18.

- b. Per the provisions of Section 2.17.4 (Dismissal), an at-will faculty member is entitled to a Faculty Hearing Review of a Provost recommendation for dismissal during the term of appointment only in the case of a claim that the Provost's recommendation was due to discrimination prohibited under Federal or State law or University policy.
- c. Per the provisions of Section 2.17.6, a Provost recommendation to terminate tenured or probationary faculty is only allowed for reasons of prolonged mental or physical illness (see Section 2.17.6.2) or for reasons of Reduction in Force due to financial exigency (see Section 2.17.6.3). In both cases, a tenured or probationary faculty member is entitled to request a Grievance Hearing Review under the provisions of Section 2.18.
- d. In any recommendation for dismissal or termination, regardless of the reason or the status of the faculty member, mediation is not required.
- e. Provisions for appellate review at the Board of Governors level for dismissal and termination decisions involving tenured or probationary faculty are described in Sections 2.17.4, 2.17.6.2.3 and 2.17.6.3.5. Board review of decisions to dismiss at-will faculty is not permitted.

#### **2.18.6 Description of Terms**

##### **a. Administrative Duties**

With respect to qualification to serve on the Grievance Panel or as a mediator, administrative duty or duties refers to the service of those members of the academic faculty acting as the administrators responsible for the various administrative units, departments, colleges, and the University, and responsible for budgets and supervising and evaluating personnel other than state classified personnel. The term shall cover persons having the title "Assistant" or "Associate" Dean. However, service by members of the academic faculty as chairs of faculty committees, as the administrators responsible for the various interdisciplinary programs existing on or off-campus, or as Principal Investigators on contracts and grants shall not be considered to be administrative duties.

##### **b. Burden of Proof**

Burden of proof refers to the obligation a party has to prove their claims, assertions or defenses by a preponderance of the evidence. Preponderance of the evidence means to prove that a claim, assertion or defense (s) is more probably true than not. See Section 2.18.8 a, b and c concerning which party assumes the burden of proof for each class of grievance.

##### **c. Complaint**

A written statement submitted by the Grievant to the University Grievance Officer which shall:

- i. Identify the nature of the Grievable Action.
- ii. Name the parties to the grievable conflict.
- iii. Describe how the action being complained of is unfair, unreasonable, arbitrary, capricious, or discriminatory, and/or is contrary to normal administrative procedures as described in the Faculty Handbook and/or violates academic freedom.

- iv. Identify how the decision or action adversely affects the Grievant in his or her present or future academic and/or professional capacity, and/or professional capacity and/or negatively affect the integrity or quality of the academic program.
- v. Describe the desired redress and justify its appropriateness relative to the specific complaints identified in items (iii) and (iv) above.

A completed and signed copy of the Grievance Complaint Form provided in Appendix I of the Faculty Handbook shall be included with the Complaint.

**d. Computation of Time**

In computing any period of time prescribed or allowed by this policy, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included. Actions required by that last day must be completed by 11:59 p.m.

**e. Confidentiality**

The confidentiality of grievance complaints and proceedings shall be maintained as allowed by law throughout the process and after the final decision, subject only to the need of the responsible individuals and others at the University to comply with the processes specified herein. (See Section 2.18.11.6 and Section 2.18.16.)

**f. Discovery**

Discovery is that point in time when the individual knew or should have known that a basis for a grievance exists. (See Section 2.18.8.)

**g. Grievants**

Individuals who file a formal grievance complaint in compliance with the requirements stated in Section 2.18.7. Any ranked or titled academic faculty member as defined in Section 2.2.1 is entitled to grieve under the terms and conditions of this policy. The four academic ranks approved by the University include Instructor, Assistant Professor, Associate Professor, and Professor; all ranked academic faculty are employed on tenured or probationary appointments and may submit Class A or Class B Grievant Complaints as stipulated in Section 2.18.8. The six academic titles approved by the University include Lecturer, Adjunct Professor, Visiting Professor, Faculty/Research Associate, Faculty-in-Residence, and Endowed Chair/Professorship; all titled academic faculty are employed on at-will appointments and may only submit Class C Grievant Complaints as stipulated in Section 2.18.8.

**h. Grievable Actions / Grievable Conflict**

"Grievable Actions" refers to actions or decisions as described in Section 2.18.8 that can be the basis of a formal grievance complaint. "Grievable Conflict" refers to a situation arising as a result of such an action or decision.

**i. Grievance Hearing Committee**

A committee consisting of five (5) members of the Grievance Panel assigned to review a specific Complaint as described in Sections 2.18.12 and 2.18.14.3.

**j. Grievance Panel**

The Grievance Panel consists of a pool of eligible Grievance Hearing Committee members consisting of fifteen (15) tenured academic faculty members as described in Section 2.18.14.1. Individuals serving as members of the Grievance Panel are not permitted to simultaneously serve as University Mediators.

**k. Parties to a Grievance**

Parties to a grievance include only the Grievant and the Responsible Individual.

**I. Response**

A written statement prepared by a Responsible Individual (see Section 2.18.6m) in response to a written Request for Formal Grievance Hearing Review which must be submitted to the Grievant and the UGO no later than five (5) working days after receiving the Request for Formal Grievance Hearing Review, per Section 2.18.12.1.

**m. Responsible Individual**

The individual responsible for the decision or action which constitutes the basis of a grievance complaint.

**n. Request for Formal Grievance Hearing Review**

A written statement submitted by the Grievant to the University Grievance Officer which shall include

- i. A completed and signed copy of the Request for Formal Grievance Hearing Review provided in Appendix J of the Faculty Handbook
- ii. A copy of the Complaint
- iii. A summary of the evidence that the Grievant is prepared to submit to support the claim.

See Section 2.18.12 for further information concerning materials provided as evidence for a Hearing Review.

**o. Right to Counsel**

Parties to Grievances may seek the aid and assistance of counsel, either legal and/or peer, who may participate in formal Grievance Hearing proceedings as described in Sections 2.18.12.5. Legal counsel refers to those counselors selected by the parties who are licensed to practice law, whether members of the academic faculty or not. Peer counsel refers to those counselors selected by the parties who are not licensed to practice law. Counselors shall not have standing to speak.

**p. Settlement Agreement**

A written agreement to settle a grievable conflict reached either during the mediation period or at some point following the mediation period but prior to the issuance of a written Hearing Review Committee Decision. See Sections 2.18.11.5b and 2.18.12.4 for information concerning legal and administrative review and approval.

**q. Working Day**

Any day of normal University operations based upon the five (5) day, Monday through Friday week, except all official University holidays. See Section 2.18.10 concerning possible postponements of mediation and grievance procedures during the summer months.

**r. University Mediators (UMs)**

Individuals responsible for conducting mediation as described in Section 2.18.11.

Individuals serving as members of the Grievance Panel are not permitted to simultaneously serve as University Mediators.

**s. University Grievance Officer (UGO)**

Individual responsible for coordinating and facilitating the activities of the UMs, the Grievance Panel, and the Grievance Hearing Committees. Detailed responsibilities of and selection process for the UGO are described in Section 2.18.13.

## **2.18.7 The Right to Grieve**

### **2.18.7.1 Persons Entitled to Grieve**

Any ranked or titled academic faculty member as defined in Section 2.2.1 may initiate a Grievance, subject to the requirements set forth above (Mediation) and as further provided below. Grievances by more than one (1) faculty member from a single administrative unit or department or committee thereof may be joined in a common grievance if, in the discretion of the UGO, their Grievances have sufficient commonality to be heard collectively. Persons entitled to grieve under the terms and conditions of this policy are referred to as "Grievants." Matters that can be subject of Grievances are described in Section 2.18.8 and are called "Grievable Actions."

### **2.18.7.2 Provision of Due Process to Grievants**

No action that may deprive a faculty member of a constitutional right shall be taken unless such a member has first been accorded due process of law.

## **2.18.8 Forms of Grievable Actions**

Grievable Actions will be in the form of three (3) separate classes of Grievances.

Class A and B Grievances, as more fully described below, must involve a complaint by a tenured or probationary faculty member that a Grievable Action has occurred because a decision, recommendation, or action of an administrator is unfair, unreasonable, arbitrary, capricious, or discriminatory, and/or is contrary to normal administrative procedures as described in the Faculty Handbook, and/or violates academic freedom, and that it does or will adversely affect the Grievant in his or her academic and/or professional capacity and/or negatively affect the integrity or quality of the academic program, excepting those matters set forth in Section 2.18.3 and Section 2.18.4.

Class C Grievances, as more fully described below, must involve a complaint by an at-will faculty member whose employment was terminated by the University.

The determination of whether a Grievance is considered a Class A, Class B or Class C Grievance shall be made by a majority vote of the Grievance Hearing Committee appointed to the grievance.

- a. Class A Grievances are those that involve complaints by a tenure or probationary faculty member about the following actions: termination of contractual rights, reduction of salary, demotion, actions violative of academic and intellectual freedom, or assignment of unreasonable workloads. The burden of proof in Class A Grievances falls upon the individual initiating the decision or the action which constitutes the basis of the grievance ("Responsible Individual"). (For description of Burden of Proof, see Section 2.18.6b.)
- b. Class B Grievances pertain to a complaint by a tenure or probationary faculty member concerning a term or condition of employment other than those that may be the basis for a Class A or Class C Grievance, such as reappointment, amount of salary increase, denial of promotion, denial of tenure, abuse of discretion, lower evaluation than deserved on annual review, or denial of sabbatical leave. The burden of proof in Class B Grievances falls upon the Grievant. (For description of Burden of Proof, see Section 2.18.6b.)
- c. Class C Grievances involve a claim by an at-will faculty member that the Provost's recommendation to the President regarding termination was due to discrimination prohibited under Federal or State law or University policy. The burden of proof in Class C Grievances shall fall upon the Grievant. (For description of Burden of Proof, see Section 2.18.6b.)

Tenure and tenure-track faculty requests for a salary adjustment related to equity or salary compression do not form the basis of a grievance complaint, but shall be considered under the provisions of Section 2.13.2.2. Regarding Class A and Class B complaints related to salary, see also Section 2.13.3.

## **2.18.9 Overview of Grievance Process.**

### **Step 1 Informal Resolution**

Prior to referring a grievable conflict to the University Grievance Officer (hereinafter referred to as “UGO”) per the provision of Step 2, the Grievant is encouraged to seek to resolve the dispute informally through discussions with the responsible individual(s) and the immediate supervisor of the responsible individual(s). Failure to seek informal resolution within twenty (20) working days after the date of the decision or action giving rise to the grievable conflict or Discovery of the decision or action shall not be grounds for denying access to the formal mediation and grievance procedures described in Section 2.18.

### **Step 2 Filing of a Grievance Complaint with University Grievance Officer**

If informal resolution is not achieved, then a formal Grievance Complaint shall be submitted by the faculty member to the UGO no later than twenty (20) working days after the date of the decision or action giving rise to the grievable conflict or Discovery of the decision or action. For Class B Grievance Complaints involving lower evaluation than deserved on annual review, amount of salary increase, denial of promotion, denial of tenure, or non-reappointment, Discovery shall be based on the dates specified in Sections 2.9.1.2j, 2.9.3.1k, and 2.17.3.2.1. See Section 2.18.6 for details concerning Discovery and the preparation of a Grievance Complaint.

### **Step 3 Referral of Grievable Conflicts to University Mediators**

The UGO shall assign a University Mediator (hereinafter referred to as “UM”) from the pool within five (5) working days after receiving a Grievance Complaint. A first meeting with mediation participants will take place within ten (10) working days after that assignment, except in the case of an objection to the assignment of the UM. If the UM has reason to believe that mediation efforts are likely to produce a resolution of the grievable conflict, the mediation period will be shall be continued. If the mediation period does not produce a resolution of a grievable conflict within thirty (30) working days of the date of the UM assignment, the UM will provide a written statement to that effect to the parties indicating the termination of mediation. Mediation shall be required in all Grievance Complaints except for Class A Grievance Complaints involving Dismissal (Section 2.17.4.2d), Class A Grievance Complaints involving Termination for Prolonged Mental or Physical Illness (Section 2.17.6.2.1d), Class A Grievance Complaints involving Termination for Reduction in Force (Section 2.17.6.3.3.1i) and Class B Grievance Complaints involving denial of tenure (Section 2.9.3.1k). In these cases, mediation may take place at the request of the Grievant. See Section 2.18.11 for additional details concerning the Mediation Time Line and Procedures.

### **Step 4 Request for Formal Grievance Hearing Review**

Within fifteen (15) working days after the date of the written notice of termination of mediation, the Grievant shall submit a written Request for a Formal Grievance Hearing Review to the Responsible Individual and the UGO. In those cases where mediation is not required (see Step 3), a Request for Formal Grievance Hearing Review must be filed within fifteen (15) working days of filing the Grievance Complaint form. See Section 2.18.6n for further details concerning the preparation of a Request for Formal Grievance Hearing Review.

**Step 5 Written response by Responsible Individual**

Upon receipt of the Request for a Formal Grievance Hearing Review from the Grievant, the Responsible Individual shall prepare a written response (“the Response”) and submit it to the Grievant and the UGO no later than five (5) working days after receiving the Request for a Formal Grievance Hearing Review. This Response should be limited to addressing the claim made in the Request for a Formal Grievance Hearing Review.

**Step 6 Commencement of the Grievance Hearing Review**

The UGO shall forward the Request for a Formal Grievance Hearing Review and the Response to the Grievance Hearing Committee (hereinafter referred to as “the Committee”). The first hearing session shall take place no later than ten (10) working days following a Grievant's request for a formal hearing and culminate in a written decision from the Grievance Hearing Committee within ten (10) working days of the date of the last hearing session. See 2.18.12 for further details concerning the Grievance Hearing Review Procedures.

**Step 7 Administrative Review of the Grievance Hearing Review Committee Decision**

Decisions of the Grievance Hearing Committee adverse to the Grievant are final unless the Grievant chooses to appeal the committee decision. All other decisions of the Grievance Hearing Committee must be reviewed and approved by the Provost and President before they become final, unless the Provost or the President is a party to the Grievance. If the Provost is a party to the Grievance, but the President is not, the review shall be made only by the President. If the President is a party to the Grievance, the review shall be made only by the Board of Governors as detailed in Step 10 below.

**Step 8 Provost Review and Recommendation**

The Provost shall consider the recommendations of the Grievance Hearing Committee concerning a Grievance only on the basis of the written record accumulated to that point, together with an appeal, if any, by the Grievant. An appeal by the Grievant must be submitted to the Provost within five (5) working days after receipt of the written decision of the Grievance Hearing Committee and must provide reasons for the appeal. Within ten (10) working days of an appeal from the Grievant or a Grievance Hearing Committee decision that was not appealed, the Provost shall respond in writing. See Section 2.18.12.9.1 for details on Provost Review.

**Step 9 Presidential Review and Action**

The President shall consider the recommendations of the Grievance Hearing Committee and the Provost (unless the latter was a party to the Grievance) and any appeals by the Grievant. An appeal by the Grievant must be submitted to the President within five (5) working days after receipt of the written statement from the Provost (or the written decision of the Grievance Hearing Committee if the Provost was a party to the Grievance) and must provide reasons for the appeal. Failure of the Grievant to file an appeal within this period shall constitute acceptance of the decision of the Provost (or the decision of the Grievance Hearing Committee if the Provost was a party to the Grievance). The President shall issue a decision to all parties, members of the Grievance Hearing Committee and the UGO within fifteen (15) working days after receipt of all relevant material. See Section 2.18.12.9.2 for details on Presidential Review and Action.

## **Step 10 Appeal to the Board in Cases Involving the President as a Party to the Grievance or in Cases Involving Dismissal/Termination of a Tenured or Probationary Faculty Member**

If the President was a party to the Grievance, or if the President recommends dismissal or termination of a tenured or probationary faculty member, the Grievant may submit an appeal to the CSU-System Board of Governors. See Section 2.18.12.9.3 for details concerning the Board appeals process.

### **2.18.10 Time Limitations**

By written agreement of the parties, or in the event of pressing emergencies, subject to the written approval of the UGO, the time limits set forth in Section 2.18 may be extended for reasonable periods.

In the absence of such an agreement, the following shall apply when any action which is required to be taken within a specified time period is not taken in time:

- a. If the Grievant fails to act within the time limits provided herein, the University shall have no responsibility to process the grievance and it shall be deemed withdrawn.
- b. In the case where the Responsible Individual or UGO fails to act in time, the grievant may proceed to the next level of the procedure and any subsequently issued decision on the matter at the bypassed level shall be void, with the following exceptions:
  - i. In the case of a Complaint that is filed less than forty (40) working days before the end of the academic year or during the summer, mediation and hearing procedures may be postponed until the beginning of the following academic year by the UGO who shall make this decision based on the nature and seriousness of the grievable action or conflict. The written decision of the UGO to postpone mediation and hearing procedures will be provided to all Parties within five (5) working days of receipt of the Complaint.
  - ii. In the case of a Request for Formal Grievance Hearing Review which is filed less than fifty (50) working days before the end of the academic year or during the summer, hearing procedures may be postponed until the beginning of the following academic year by the UGO who shall make this decision based on the nature and seriousness of the grievable action or conflict. The written decision of the UGO to postpone hearing procedures will be provided to all Parties within five (5) working days of receipt of the Request for Formal Grievance Hearing Review.
  - iii. In the case of a decision by the UGO that Mediation and/or Hearing Review should continue during summer months, the individual(s) appointed as a University Mediator and/or as a member of a Hearing Review Committee may receive compensation, as determined by the Provost, for service during summer months.

### **2.18.11 Mediation Process**

#### **2.18.11.1 Summary of Mediation Process**

The persons responsible for conducting mediation under this section will be referred to as "University Mediators" (hereinafter referred to as "UMs"). The UMs will be responsible for mediating grievable conflicts involving academic faculty members. There will be a pool of UMs. The assigning of UMs is set forth in Section 2.18.11.3. Upon such assignment, the UM shall meet with the mediation participants. If, after meeting with the mediation participants, the UM reasonably believes that mediation efforts may result in a resolution of the grievable conflict, the mediation participants shall enter into a written agreement for

a mediation period of a specified duration, not to exceed 30 working days from the date of the assignment of the UM, with the UM to attempt to resolve the grievable conflict.

An administrator's decision which gave rise to a grievable conflict may be altered through the mediation process. Possible outcomes of the mediation process as regards an administrator's decision are:

- a. Acceptance of the decision;
- b. Modification of the decision;
- c. Repeal of the decision;
- d. Proceeding to grievance due to a lack of resolution;
- e. Other outcomes agreed to between the parties during the mediation process.

If the mediation process does not produce a resolution of a grievable conflict within a reasonable time period (not to exceed 30 working days from the date of the assignment of the UM), or if the UM finds that it is unlikely to do so, the faculty member shall be entitled to file a Request for a Formal Grievance Review Hearing in accordance with Step 4 of Section 2.18.9.

## **2.18.11.2 University Mediators**

### **2.18.11.2.1 Qualifications of University Mediators**

Each UM for academic faculty members shall be a tenured, full-time member of the academic faculty with at least the rank of associate professor or shall be a faculty member with a transitional appointment who previously held such a rank or shall be a retired faculty member who previously held such a rank. Retired faculty who serve as UMs must be within three years of retirement at the time of their initial appointment and may serve up to three additional one-year appointments provided they are within six years of retirement throughout their term of appointment. A UM shall have no administrative duties (see Section 2.18.6a) throughout the term of service. Individuals serving as members of the Grievance Panel are not permitted to simultaneously serve as University Mediators.

### **2.18.11.2.2 Selection and Terms of University Mediators for Academic Faculty**

The President of Faculty Senate and the Provost shall solicit nominations for UMs from the academic faculty members prior to the end of each academic year. In consultation with the Faculty Senate, the Council of Deans, and any other appropriate groups, the President of Faculty Senate and the Provost shall jointly forward recommendations to the President. The President shall appoint at least two (2) academic faculty UMs for the upcoming year, with the number of appointments made in any given year sufficient to maintain a pool of at least six UMs at all times. All appointees must be chosen from the recommendation list prepared by the President of Faculty Senate and the Provost. The UMs for academic faculty members normally shall take office on July 1 following their appointment by the President.

As appropriate, individuals appointed as UMs may have their effort distributions adjusted, as negotiated with their immediate supervisor, to reflect their involvement in the mediation process; or they may receive reassigned time from their academic obligations, or compensation, as determined by the Provost, if mediation is required beyond their appointment periods, during summer months, or if they are retired.

The term of office for a UM shall be three (3) consecutive one (1) year appointments, with each appointment beginning on July 1 and ending on June 30 of the following calendar year. There is no limit to the number of terms a UM may

serve. If the position becomes vacant before the expiration of the term, the President of Faculty Senate and the Provost shall recommend jointly an interim appointment to the President to serve until a new UM is selected and takes office the next July 1. Individuals appointed as an interim UM should either have training as mediators per the provisions of Section 2.18.11.2.3, or receive such training immediately upon appointment.

#### **2.18.11.2.3 University Mediators' Training**

The UMs must attend periodic mediation training sessions to be eligible to participate in the University's mediation process. Training sessions shall be arranged by the Provost no less frequently than the beginning of each Academic Year, and be held by experienced mediation professionals, as determined by the Provost in consultation with the President of Faculty Senate.

#### **2.18.11.3 Referral of Grievable Conflicts to University Mediators**

Within five (5) working days after receiving a Complaint, the UGO shall assign a UM from the pool. The mediation participants shall have five (5) working days from the date of the assignment of the UM to object to such an assignment. An objection can only be raised based on a potential or actual conflict of interest arising from the UM's prior or current relationship with the mediation participants or knowledge of previous related grievable conflicts. The UGO shall make the final decision on the assignment of a UM.

#### **2.18.11.4 Mediation Procedures/Time Line**

- a. The UM shall attempt to mediate potential grievable conflicts involving faculty members by meeting with the mediation participants, discussing their respective positions, and reviewing relevant information. Such action shall occur within ten (10) working days following assignment of a grievable conflict to a UM.
- b. If, after meeting with the mediation participants, the UM has reason to believe that mediation efforts are likely to produce a resolution of the grievable conflict, the mediation period shall be continued. If the mediation period does not produce a resolution of a grievable conflict within thirty (30) working days from the date of the UM appointment, the mediator shall issue a written notice of termination of the mediation.
- c. Within fifteen (15) working days of the date of the notice of termination of mediation, the grievant shall file a written request for a formal Grievance Review Hearing with the Responsible Individual and the UGO. The UM may continue to work with the mediation participants even after a written Request for a Formal Grievance Review Hearing is filed under Section 2.18.12. The UM's mediation efforts must, however, cease at the time that a Review Hearing commences. Grievable conflicts that are not referred for mediation within twenty (20) working days of Discovery or for which a Request for a Formal Grievance Review Hearing is not filed within fifteen (15) working days following the termination of the mediation period (see Section 2.18.11.4b) are not eligible to be heard by a Grievance Hearing Committee under the provisions of Section 2.18.12.
- d. Mediation shall be required in all Grievance Complaints except for Class A Grievance Complaints involving Dismissal (Section 2.17.4.2d), Class A Grievance Complaints involving Termination for Prolonged Mental or Physical Illness (Section 2.17.6.2.1d), Class A Grievance Complaints involving Termination for Reduction in Force (Section 2.17.6.3.3.1i) and Class B Grievance Complaints involving denial of tenure (Section 2.9.3.1k). In these cases, mediation may take place at the request of the Grievant. Should the Grievant in such a case decline mediation, a Request for Formal

Grievance Hearing Review must be filed within 15 working days of filing the Grievance Complaint form,

#### **2.18.11.5 Documentation**

- a. The UGO and/or the UM assigned to the case may request from the participants, and is entitled to receive promptly, any and all materials that either one may deem relevant to the grievable conflict.
- b. Any resolution reached during mediation by participants must be reduced to writing and titled as a Settlement Agreement. Such Agreements are subject to approval by the Provost and the President and review by the Office of General Counsel for legal sufficiency.

#### **2.18.11.6 Admissibility of Communication with the University Mediators**

Documentation and other communication created specifically in connection with the resolution of a grievable conflict shall constitute a part of the faculty member's personnel file pursuant to the Dispute Resolution Act, C.R.S. 13-22-301 et seq. Accordingly, such communication is intended to be confidential to the full extent permitted by law and not be disclosed, except as may otherwise be required by law or by agreement of the mediation participants. When a resolution is reached, documentation and other communication created during the mediation process shall be forwarded to the UGO, who shall retain the materials for a minimum of 8 years. For purposes of admissibility in a grievance hearing, records created by a Faculty member or a Responsible Individual prior to a faculty member's initiation of the mediation process are not considered confidential communication.

#### **2.18.12 Grievance Hearing Review Procedure**

The faculty member is required to participate in the mediation process set forth above prior to requesting a Grievance Hearing Review. If a satisfactory resolution is not achieved through the mediation process, or if the UM determines that mediation will not be successful, the faculty member may then file a Request for Formal Grievance Hearing Review using the procedure below.

##### **2.18.12.1 Time and Manner of Initiating a Grievance Hearing Review**

A Grievance Hearing Review must be initiated by submitting a written Request for a Hearing Review to the Responsible Individual and the UGO no later than fifteen (15) working days after the date of notice of termination of the mediation period, as described in Section 2.18.11.4d.

The Request for Formal Grievance Hearing Review shall include:

- a. A completed and signed copy of the Request for Formal Grievance Hearing Review provided in Appendix J of the Faculty Handbook
- b. A copy of the Complaint
- c. A summary of the evidence that the Grievant is prepared to submit to support the claim.

The UGO shall have the right to question and determine the applicability, reasonableness, and relevance of any material to the Grievance, but must relate any such concerns to the Grievant and provide the Grievant an opportunity to improve the materials. One week after this communication, the UGO shall forward the Grievant's complaint to the Committee with a statement that, in the opinion of the UGO, the Grievant has or has not produced relevant and/or reasonable evidence.

Upon receipt of the Request for Formal Hearing Review from the Grievant, the Responsible Individual shall prepare a written response ("the Response") and submit it to the Grievant

and the UGO no later than five (5) working days after receiving the Request for Formal Hearing Review. This Response should be limited to addressing the claim made in the Request for Formal Hearing Review.

#### **2.18.12.2 Receipt of Request for Formal Hearing Review by Grievance Hearing Committee**

The UGO shall forward the written Request for Formal Hearing Review and the Response (see Section 2.18.12.1) to the Grievance Hearing Committee.

The Committee may, either at the request of a party, or on its own initiative:

- a. Instruct the parties to file further written statements explaining their respective positions.
- b. Direct the parties to produce all relevant documents and to identify all possible witnesses summarizing their expected testimony

The Committee may decide a Class B grievance without a hearing if the Committee determines that the Complaint lacks substantive merit under the criteria specified in Section 2.18.8. Prior to rendering a decision on a Class B grievance without a hearing, the Committee Chairperson shall relate the Committee concerns to the UGO and the Grievant in writing and provide the Grievant an opportunity to supplement the materials provided and further explain his/her position. Within five (5) working days of receipt of a request for supplemental materials, the Grievant shall forward a response to the Committee Chairperson and the UGO. Should the Committee find that the Grievant's response does not adequately address Committee concerns about the merit of the Complaint, the Committee may render a decision without a hearing. The faculty member shall have the right to appeal to the Provost a decision rendered by the Committee without a hearing, unless the Provost is a party to the Grievance, in which case the President shall consider the appeal.

#### **2.18.12.3 Right To Clerical Assistance**

Any person requesting a formal Grievance Hearing Review has the right to clerical support from University personnel for preparation of documents for use in the Grievance process. Because maintenance of confidentiality is an important element of the procedure, the clerical support should come from a unit at the next higher level than the one in which the Grievant is housed (e.g., from the dean, for an academic faculty member; from a vice president, for a dean; etc.).

#### **2.18.12.4 Resolution by Settlement Agreement**

At any time in these proceedings, the Parties to a grievance may seek to resolve the matter by mutual agreement. A Settlement Agreement must be forwarded in writing to the Provost for administrative review and approval per the procedures in Section 2.18.12.9. In the event that the Settlement Agreement is not approved by the Provost and the President, Grievance Hearing Procedures will re-commence within five (5) working days.

#### **2.18.12.5 Conduct of Grievance Hearings**

Evidentiary rules that are applicable to all hearings are given in Section 2.18.12.7. The rules and procedure outlined below shall apply in all formal hearings conducted by a Grievance Hearing Committee.

- a. The Formal Grievance Review Hearing shall commence no later than ten (10) working days following a Grievant's Request for a Formal Hearing. Each party has the right to request a delay of no more than ten (10) working days upon showing a necessity to allow the proper development of the evidence and arguments, and the UGO shall have the authority to delay hearings to facilitate joining of complaints as provided for in Section 2.18.7.1. Grievance hearings are closed to the public. The

Chairperson of the Grievance Committee shall decide all procedural and evidentiary issues during the proceedings.

- b. Prior to the start of the grievance hearing, the Grievance Hearing Committee chairperson shall provide the opportunity to both parties to challenge for cause members of the Grievance Hearing Committee sitting to hear the Grievance.
  - i. Challenge for cause shall be defined to mean a showing that the challenged member of the Grievance Hearing Committee has a conflict of interest and, either through involvement with the original decision or involvement with the parties (one or both), may be incapable of rendering an impartial decision.
  - ii. The Grievance Hearing Committee chairperson shall have the authority to decide all such challenges other than those involving the chairperson. Such latter decisions shall be made by the UGO. Members successfully challenged shall be excused from hearing the Grievance.
  - iii. If, because of challenge or excuse, a member of a Grievance Hearing Committee is unable to sit the next succeeding Grievance Panel member in the rotation order shall sit to hear the Grievance.
- c. Parties to the Grievance shall have the right to legal and/or peer counsel (see Section 2.18.6o). Parties shall identify their counsel no later than the beginning of the grievance hearing and shall not have the right to delay their proceedings because of the lack of counsel, except in the case of emergencies (as determined by the Grievance Hearing Chairperson) occur. In cases where the Office of General Counsel provides an advisor to an administrator against whom a grievance has been filed, a separate representative from the Office of General Counsel would be assigned to advise the Grievance Hearing Committee, thereby preventing a conflict of interest.
- d. Once initiated, the hearings shall continue on a daily or nightly basis depending on the convenience of the parties and in all cases shall be concluded within ten (10) working days unless extended by the Grievance Hearing Committee.
- e. Parties to a Grievance have the responsibility to attend all scheduled hearings. No substitutes for the parties shall be allowed. If a party is unwilling to attend any hearing, the proceedings may be held *ex parte*. Parties to a grievance shall have the right to delay proceedings in the event that they are unable to be present due to an emergency (as determined by the Grievance Hearing Chairperson). A scheduled hearing session may not take place without all five members of the Committee present. The presence of the UGO at a hearing session is not required.
- f. Parties to Grievances and counsel for such parties are responsible for abiding by the procedures herein established. Those parties failing to adhere to the procedures, or failing to assure that their counsel adhere to the procedures, may be excluded from participation in the hearings by a majority of the Grievance Hearing Chairperson and shall have written decision rendered without the presence of those parties.
- g. The Grievance Hearing Committee Chairperson (see Section 2.18.14.4) shall open the hearing by determining that the parties are present and by identifying the legal and/or peer counsel chosen by the parties. Such advisors or counsels are free to fully advise respective clients to the dispute throughout the proceedings, to assist in formulating any required written documentation, and to help prepare for any oral presentation, but may not actively participate in the proceedings by making objections, by examining witnesses, or attempting to argue the case. The attorneys

may not offer unsolicited advice to the Committee. Only the committee members, UGO, parties to the Grievance, and witnesses called shall have standing to speak.

- h. The Grievance Hearing Committee chairperson shall provide the opportunity to all members of the Grievance Hearing Committee to excuse themselves from service prior to a hearing on grounds of conflict of interest or such intimate involvement in or with the original decision of the parties (one or both) as to be incapable of rendering an impartial judgment concerning the alleged Grievance.

#### **2.18.12.6 Order of Proceedings for Grievance Hearings**

The sequence during the hearings shall vary in accordance with the allocation of the burden of proof. In all instances, the party having the burden of proof shall have the right and responsibility to present first. Subject to Section 2.18.12.5 above, the following persons are entitled to be present during the hearings:

- a. The parties and their advisors and representatives (see Section 2.18.6o).
- b. The UGO, Committee members, and their counsel.
- c. Witnesses when testifying.
- d. Such other persons as are specifically authorized by the Grievance Hearing Committee, unless their presence is objected to by either party and sustained by the UGO.

The hearing process normally should proceed as follows:

- a. Statement by the party having the burden of proof.
- b. Statement by the other party.
- c. Presentation of evidence, either through direct testimony or in authenticated documentary form, by the party carrying the burden of proof (see Section 2.18.12.7 for Evidentiary Rules). The opposing party shall have the right to challenge the relevancy of testimony and written evidence, or to impugn the authenticity of the testimony or evidence presented, and to cross-examine the parties and all witnesses following their original testimony and questioning by the party calling them. All decisions on challenges shall be rendered by the Committee chairperson. Challenges of procedural decisions rendered by the chairperson shall be decided by a majority vote of the remaining members of the Grievance Hearing Committee, with all tie votes sustaining the chairperson.
- d. Presentation of evidence, as described immediately above, by the opposing party with the same rights and arrangements as outlined immediately above for both parties.
- e. Direct rebuttal of arguments made by each party.
- f. Members of the Grievance Hearing Committee sitting to hear the Grievance shall have the right to direct questions to witnesses called or to the parties during the presentation of evidence. Where a witness cannot or will not appear, but the Grievance Hearing Committee determines that the interest of justice requires admission of his/her statement, then the Grievance Hearing Committee will attempt to arrange for a deposition. An affidavit or statement from a witness proffered by one party, where the witness is not available for cross-examination, shall not be introduced into the record except by agreement of the non-proffering party.

- g. Summary arguments by the party having the burden of proof, followed by summary arguments of the opposing party.
- h. The members of the Grievance Hearing Committee shall have the authority to direct any further questions to either or both parties following argument and summary, to schedule further hearings to develop points not yet clarified or call additional witnesses requested by the Grievance Hearing Committee if the Committee feels the need to do so. A decision to require further hearings shall be made by the majority vote of the Committee, and such decision shall be announced by the Committee chairperson to the parties with instructions as to the points of evidence or argument requiring further clarification.

#### **2.18.12.7 Evidentiary Rules for Grievance Hearings**

The following rules shall apply in all hearings before a Grievance Hearing Committee:

- a. It shall be the responsibility of the party seeking to introduce the evidence to demonstrate to the satisfaction of the Committee the pertinence, legitimacy, authenticity and relevance of the evidence presented.
- b. Witnesses called to testify shall have direct and personal knowledge of the points attested to and shall be subject to challenge on the ground that they lack such knowledge. Parties seeking to introduce the testimony of witnesses shall first establish the foundation for (access to pertinent evidence) and the relevancy of the testimony of witnesses.
- c. Either party also may object during the questioning or cross questioning of witnesses to the relevancy of the line of questioning pursued. In such an event, the questioner shall show the relevance of the questioning to the Grievance to the satisfaction of the Committee. All hearings shall be recorded and upon request either party shall have the right to a copy of the record.
- d. Communications and documents prepared and produced solely in connection with the Mediation process shall not be admissible at the Hearing.
- e. The UM for a specific case cannot attend or be called as a witness in a grievance hearing for that case.
- f. In cases involving allegations of unlawful harassment, discrimination, or retaliation, the Grievance Hearing Committee shall review the investigative report of the Director of AA/EEO, and shall give strong deference to the findings and recommendations contained therein.
- g. No offer of settlement of a grievance by either party to the grievance will be admissible as evidence in later grievance proceedings or elsewhere.
- h. No settlement of a grievance will constitute a binding precedent in settlement of similar grievances, unless otherwise agreed.

#### **2.18.12.8 Grievance Hearing Committee Decision**

- a. Following the hearing, the Grievance Hearing Committee shall retire for the purpose of discussion, conference, and decision. These deliberations shall remain confidential to the full extent permitted by law. The Grievance Hearing Committee shall not substitute its judgment on the substantive merits of the decision which is the basis of the Grievance but will review the decision or action of the Responsible Individual solely to determine whether the action is unfair, unreasonable, arbitrary,

capricious, or discriminatory, and/or is contrary to normal administrative procedures as described in the Faculty Handbook and/or violates academic freedom.

- b. When a majority decision has been attained, the Committee chairperson shall have the responsibility to oversee the formulation of a written statement of the decision that summarizes the relevant evidence and explains the reasoning that supports the decision. It also shall state specifically any action necessitated by the decision and identify any proposed relief to be provided. Should the Committee chairperson not concur in the majority decision, the members of the majority shall choose from among their number a person to oversee the formulation of the written statement of the decision.
- c. In all cases, the written decision of the Committee shall be rendered within ten (10) working days of the adjournment for discussion and conference. Dissenting opinions, if any, shall follow the same guidelines and shall be rendered within the same time limits. The Committee chairperson shall transmit the written decision(s) of the Committee to the UGO.
- d. The UGO shall notify both parties when a written decision has been rendered. Within two (2) working days after notice of a decision has been given, the UGO shall announce the decision to both parties. Written copies of the decision or decisions shall be provided to the parties and to the immediate supervisor of the Responsible Individual for administrative review.
- e. Upon request, any party to the conflict is entitled at no cost to a copy of all written or documentary evidence introduced at the hearing.

#### **2.18.12.9 Administrative Review and Approval**

Decisions of the Grievance Hearing Committee adverse to the Grievant are final unless the Grievant chooses to appeal the committee decision. All other decisions of the Grievance Hearing Committee must be reviewed and approved by the Provost and President before they become final, unless the Provost or the President is a party to the Grievance. If the Provost is a party to the Grievance, but the President is not, the review shall be made only by the President. If the President is a party to the Grievance, the review shall be made only by the Board.

##### **2.18.12.9.1 Provost Review and Recommendation**

The Provost shall consider the written decision of the Grievance Hearing Committee concerning a Grievance only on the basis of the record accumulated to that point, together with an appeal, if any, by the Grievant. An appeal by the Grievant must be submitted to the Provost within five (5) working days after receipt of the written decision of the Grievance Hearing Committee and must provide reasons for the appeal. Failure of the Grievant to file an appeal within this period shall constitute acceptance of the Grievance Hearing Committee decision. No party may introduce new substantive issues for the Provost's review. The Provost shall overturn a decision of the Grievance Hearing Committee only if there is a finding that the decision of the Grievance Hearing Committee was unfair, unreasonable, arbitrary, capricious, or discriminatory.

Within ten (10) working days of receipt of an appeal from the Grievant, if any, and no later than fifteen (15) working days of receipt of the written Grievance Hearing Committee decision, the Provost shall respond by providing to all parties to the Grievance, members of the Grievance Hearing Committee and the UGO a written statement of the decision rendered with a summary of relevant evidence and the reasoning that sustains the decision. A decision to reject the Grievance Hearing Committee's decision shall be based upon a determination that the decision was

unfair, unreasonable, arbitrary, capricious, or discriminatory. The Provost shall issue a written statement of the decision, complete with a recounting or summary of the pertinent evidence, a recitation of the relevant policy or policies, and an explanation of the reasoning behind the refusal to accept the Grievance Hearing Committee decision.

#### **2.18.12.9.2 Presidential Review and Action**

- a. The President shall consider the written decision of the Grievance Hearing Committee and the Provost (unless the latter was a party to the Grievance) and any appeals by the Grievant. An appeal by the Grievant must be submitted to the President within five (5) working days after receipt of the written statement from the Provost (or the written decision of the Grievance Hearing Committee if the Provost was a party to the Grievance) and must provide reasons for the appeal. Failure of the Grievant to file an appeal within this period shall constitute acceptance of the decision of the Provost (or the decision of the Grievance Hearing Committee if the Provost was a party to the Grievance). Appeals to the President shall include a written summary of the basis for the appeal, not to exceed two (2) pages, and include copies of the Complaint, the original decision upon which the Grievance was based, the decision of the Grievance Hearing Committee, and all administrative decisions made with respect to the decision of the Grievance Hearing Committee. The UGO shall assist the Grievant in obtaining any such documentation, if necessary.

Appropriate action by the President refers to the President's decision to accept or reject the decision of the Provost (or Grievance Hearing Committee if the Provost was a party to the Grievance).

- i. A decision to accept a Grievance Hearing Committee decision in favor of a Grievant shall require that the President issue the appropriate instructions through the administrative chain leading to the administrator with whom the grievance initially was filed to make the appropriate redress of the grievance.
  - ii. A decision to accept the Grievance Hearing Committee's decision against the Grievant shall require a statement to that effect.
  - iii. A decision to reject the Grievance Hearing Committee's decision shall be based upon a determination that the decision was unfair, unreasonable, arbitrary, capricious, or discriminatory. The President shall issue a written statement of the decision, complete with a recounting or summary of the pertinent evidence, a recitation of the relevant policy or policies, and an explanation of the reasoning behind the refusal to accept the Grievance Hearing Committee decision. To provide redress in cases where the Presidential decision favors the Grievant, the President shall issue the appropriate instructions through the administrative chain leading to the administrator with whom the grievance initially was filed.
- b. The President shall issue a decision to all parties, members of the Grievance Hearing Committee and the UGO within fifteen (15) working days after receipt of all relevant material. Except as set forth below, the decision of the President is final:
    - i. Appellate review of a dismissal decision for tenured or probationary faculty may be sought before the Board of Governors of the Colorado State

University System in accordance with the Dismissal Policy in Section 2.17.4.

- ii. Appellate review of a termination decision for tenured or probationary faculty for reasons of prolonged mental or physical illness may be sought before the Board of Governors of the Colorado State University System in accordance with the Termination Policy in Section 2.17.6.2.
- iii. Appellate review of a termination decision for tenured faculty for reasons of reduction of force for reasons of financial exigency may be sought before the Board of Governors of the Colorado State University System in accordance with the Termination Policy in Section 2.17.6.3.3.

#### **2.18.12.9.3 Appeals Process in Cases Involving the President as a Party to the Grievance or in Cases Involving Dismissal/Termination of a Tenured or Probationary Faculty Member**

If the President was a party to the Grievance, or if the President recommends dismissal or termination of a tenured or probationary faculty member, the Grievant may submit an appeal to the CSU System Board of Governors (Board).

An appeal to the Board must be made in accordance with the then existing Review Policy of the Board. Copies of this Policy may be obtained either from the UGO or the Executive Secretary of the Board. The Review Policy describes Board review requirements for submission of written statements and the process by which the Board conducts its review and makes its decisions. The faculty member should refer to the Review Policy in its entirety for a complete understanding of the Board's requirements for review of dismissal decisions.

Board decisions in favor of the Grievant shall include an appropriate remedy for the Grievance, whether through special Board action or in the form of instruction for appropriate administrative relief. Decisions by the Board, whether to approve or disapprove recommendations by the Grievance Hearing Committee or to sustain or reject appeals made by Grievant, are final.

#### **2.18.12.9.4 Procedural Violations of Grievance Hearing proceedings**

Allegations that specific provisions of this Grievance Policy were violated during Grievance Hearing proceedings shall not constitute grounds for a grievance under the provisions of Section 2.18, but shall receive due consideration at the appeal level. The sole exception to this provision shall be violations of the confidentiality provisions in Section 2.18.16, which shall be grievable.

#### **2.18.13 University Grievance Officer**

The UGO is responsible for coordinating and facilitating the activities of the UMs, the Grievance Panel, and the Grievance Hearing Committees (see Sections 2.18.11 and 2.18.14). The UGO also assures that the procedures herein established are followed reasonably and accurately and decides procedural issues as set forth herein. Any departure from these procedures shall occur only with the written approval of the UGO.

##### **2.18.13.1 Selection, Qualifications, and Term of the University Grievance Officer**

The UGO shall be a tenured, full-time member of the academic faculty with at least the rank of associate professor and shall have no administrative duties (see Section 2.18.6a) throughout the term of service. The term of office shall be three (3) consecutive one (1) year appointments of July 1 – June 30. There is no limit to the number of terms a UGO may serve.

The UGO shall be evaluated on an annual basis throughout the three-year term. In October of each year of the three-year term, the Executive Committee of Faculty Senate and the Provost shall evaluate the UGO's performance. At the end of the first year and second year appointments of the three-year term, continuation of the term of the UGO into the subsequent one-year appointment shall require approval by a majority vote of the Executive Committee of Faculty Senate and separate approval by the Provost.

In October of the third year appointment of the three-year term of a UGO, the Committee on Shared Governance shall solicit nominations for UGO. Nominations must be approved by a majority vote of the Faculty Senate. When at least two nominations have received this approval, the names will be submitted to the President through the Provost. The President will select the UGO during the second week of February and the UGO will take office on the following July 1. The UGO will provide administrative reports to the Provost and the Faculty Senate.

If the position of UGO becomes vacant before the expiration of the three-year term, the Grievance Panel shall recommend an interim appointment to the President, through the Provost, to serve until a confirmed UGO, selected the following February through the procedure specified in the previous paragraph, takes office on July 1. During the interim appointment, the Interim UGO shall serve all the duties of the UGO as specified in Section 2.18.13.4. Whenever possible, an individual appointed as an Interim UGO should have prior experience with the Grievance Procedure either as an UGO or as a member of the Grievance Panel, and should be provided with release time or other compensation commensurate with the duties to be performed.

#### **2.18.13.2 Oversight of the University Grievance Officer**

The UGO shall be responsible to the Grievance Panel (see Section 2.18.14.1) which shall be authorized to adopt procedural guidelines necessary to implement provisions of Section 2.18 as well as to assure that the UGO meets his or her responsibilities under Section 2.18.13.4.

#### **2.18.13.3 Service of the University Grievance Officer**

The UGO shall be appointed part-time, depending upon the work load, with a minimum appointment fraction of 0.25. The appointment fraction and associated funds shall be negotiated at least annually among the UGO, the Provost, and the UGO's department head and may be reviewed as necessary during the year. Adequate secretarial and expense support shall be provided by the Provost.

#### **2.18.13.4 Duties of the University Grievance Officer**

The UGO shall be responsible for:

- a. Maintaining a record of actions taken with the Grievance process.
- b. Coordinating and facilitating the activities of the Grievance Panel by maintaining the records of the Panel, scheduling all meetings of the Panel for informational and organizational purposes, scheduling meetings of its Grievance Hearing Committees, calling individuals to appear before the Grievance Hearing Committees, and establishing the rotation order for service by the members of the Grievance Panel on Grievance Hearing Committees.
- c. Overseeing the grievance procedures, review processes, and mediation system hereby established to insure its effectiveness and to prepare reports to the Grievance Panel, including recommendations for improving the system.

- d. Assuring that academic faculty members are familiar with the provisions, components, purposes, and procedures of the Grievance Procedures, review processes, and mediation system.
- e. Making recommendations to the Committee regarding guidelines for the Committee to operate under pursuant to Section 2.18.
- f. Advising potential and active parties to a Grievance of their prospects for sustaining a Grievance, including their responsibilities for following the procedural rules of Section 2.18.12.
- g. Facilitating the conduct of Hearings and decision.
- h. Preparing, in consultation with the Grievance Panel, an annual report which summarizes activities and recommendations during the previous year each June for the Faculty Senate.
- i. Maintaining and updating the list of UMs.
- j. Appointing appropriate UMs to mediate grievable conflicts involving academic faculty members.

#### **2.18.13.5 Temporary Special University Grievance Officer**

In the event of a conflict of interest by the UGO in a Grievance, or in the event that the UGO becomes a Grievant or requests to be recused, the Provost shall appoint, with the approval of the Grievance Panel and the President, a Special UGO for that Grievance. The Special UGO shall have all the duties herein of the UGO for the duration of the specific Grievance for which he or she is appointed, but only for that specific Grievance. Whenever possible, an individual appointed as a Special UGO should have prior experience with the Grievance Procedure either as an UGO or as a member of the Grievance Panel, and should be provided with release time or other compensation commensurate with the special duties to be performed. The Provost may extend time limits as necessary until the Special UGO has been appointed.

### **2.18.14 Grievance Panel and Grievance Hearing Committees**

#### **2.18.14.1 Grievance Panel**

The Grievance Panel shall be a pool of eligible Grievance Hearing Committee members consisting of fifteen (15) tenured academic faculty members with at least one (1) from the Library and two (2) from every other academic unit. No person having administrative duties, as described in Section 2.18.6a, shall be qualified to serve on the Grievance Panel. Individuals serving as members of the Grievance Panel are not permitted to simultaneously serve as University Mediators. Faculty working under a transitional retirement plan are eligible to serve, but faculty on sabbatical leaves are not eligible. See also Section 1.2.5.2 concerning policies for individuals who expect to be fully retired by the end of that academic year and faculty who expect to have a sabbatical leave during the subsequent academic year.

The Grievance Panel shall meet at least once each academic year with University legal counsel to review the Grievance Procedures and Grievance Panel bylaws, with the first such meeting taking place as soon as possible following the appointment of new members to the Grievance Panel.

The Grievance Panel shall operate under a set of bylaws that describes the operating procedures of the Grievance Panel and Grievance Hearing Committees. These bylaws

shall be prepared by the Grievance Panel in consultation with the UGO, or subcommittee thereof, and shall be reviewed annually and modified as appropriate.

The Grievance Panel in consultations with the UGO shall also be responsible for making recommendation to Faculty Senate and University administration concerning the need for changes in these grievance policies and procedures.

The Grievance Panel shall elect an ad hoc chairperson for each meeting. The UGO shall be an *ex officio* and non-voting member of the Grievance Panel during its meetings.

#### **2.18.14.2 Election of Grievance Panel Members**

Faculty serving as representatives of their academic unit to the Grievance Panel shall be elected by the faculty in their academic unit, with new representatives elected no later than the first regular Faculty Senate meeting in the fall semester.

Faculty serving as at-large members of the Grievance Panel shall be elected by the Faculty Senate. Nominations for at-large members shall be solicited by the Committee on Shared Governance; self-nomination shall be permitted. Election of new at-large members on the Grievance Panel members shall take place at the first regular Faculty Senate meeting in the Fall semester. At least one week prior to that meeting, the Chairperson of the Committee on Shared Governance shall circulate the names of all nominees to all members of the faculty in order to provide faculty with an opportunity to provide feedback to their representatives on Faculty Senate concerning the nomination slate.

#### **2.18.14.3 Service on the Grievance Panel and Filling of Vacancies**

Service on the Grievance Panel shall be for a three (3) year term, the staggering of terms having been established by lot when the Panel began. Panel members who have served two (2) consecutive terms shall be ineligible for reappointment for a period of two (2) years. When vacancies occur, the Committee on Shared Governance shall fill the vacancy by appointment, in accordance with the constituency of the vacant member within ten (10) working days, unless the vacancy occurs within one (1) month before the regular election. The unexpired term shall then be filled at the next regular election.

#### **2.18.14.4 Organization and Functioning of Grievance Hearing Committees and Selection of Chairperson**

The UGO shall establish a rotation schedule for the members of the Grievance Panel to serve on Grievance Hearing Committees which shall consist of five (5) persons. Each Grievance Hearing Committee scheduled to hear a Grievance shall select from its membership a chairperson who shall be a voting member of the Committee, preside over the hearing, maintain orderly procedures, and supervise the preparation of the written decision concerning the Grievance. When the chairperson shall be in the minority in a divided vote, the person who supervises the preparation of the written decision shall serve as the spokesperson for the Grievance Hearing Committee in the event of rejection or appeal of the decision rendered.

If, because of absences or successful challenges, the five members required for Grievance Hearing Committee functioning cannot be attained or maintained, the next succeeding person(s) in the rotation order shall sit to hear the Grievance. If the chairperson shall be challenged and excused, the members sitting to hear the Grievance shall select another from among their number to be chairperson. In the event it is impossible to establish a full Committee from the remaining membership of the Grievance Panel, the parties shall nominate two (2) persons each for every vacant position, and the UGO shall name the replacements from among those names submitted by the parties, subject to further challenge for cause as provided in Section 2.18.12.5b.

#### **2.18.15 Expectations for Members of the University Community**

- a. Cooperation and participation by the members of the University community in the resolution of a complaint under these procedures is necessary.
- b. All witnesses shall be truthful in their testimony. Failure to comply with this expectation may result in the imposition of University sanctions.
- c. No person shall restrain, interfere with, coerce, attempt to intimidate, or take any reprisal against a participant under these procedures. Failure to comply with this expectation may result in the imposition of University sanctions.

#### **2.18.16 Confidentiality**

- a. Confidentiality provisions for allegations of unlawful harassment are governed by a separate policy; information concerning these provisions is available from the office of the Director of AA/EEO.
- b. The confidentiality of grievance complaints and proceedings shall be maintained as allowed by law throughout the process and after the final decision, subject only to the need of the responsible individuals and others at the University to comply with the processes specified herein, to present evidence concerning the complaint in other administrative or judicial proceedings, and to implement a decision by the President to provide redress as described in Section 2.18.11.9a(iii).

#### **2.18.17 University Accountability**

If in any consecutive twenty-four month period, the President or the Provost does not accept Grievance Hearing Committee findings that favor the Grievant in three or more cases and/or does not provide appropriate redress to the Grievant within that time period, the UGO shall notify the Executive Committee of the Faculty Senate. The administrator in question shall then meet with the Executive Committee of the Faculty Senate in a closed and confidential session. If the administrator in question does not provide an explanation acceptable by a vote to the majority of that committee, or if that administrator refuses to meet with that committee, an automatic motion of No Confidence shall be introduced in the Faculty Senate as a whole and a vote on the motion shall be taken at a Special Meeting of Faculty Senate to take place within four weeks in a closed and confidential session.

#### **2.18.18 Summary of Timing Limitations Within the Mediation System and the Grievance Review Process**

See Appendix K of Faculty Handbook.

#### **2.18.19 Flowchart of the Grievance Procedures**

See Appendix L of Faculty Handbook.