

*The revised Faculty Grievance Procedure which appears below for comment has been approved on behalf of the Faculty Senate by the Senate Executive Committee. In accordance with the Rules of the Faculty Senate, this approval will take effect if no objections are received from members of the Faculty Senate. Comments or questions regarding SEC's action may be directed to Senate Chair David Balamuth or Senate Staff Assistant Carolyn Burdon at the Faculty Senate Office, 15 College Hall/6303, Ext. 8-6943.*

## **To the University Community**

Previous versions of the Faculty Grievance Procedure were approved in 1974 and 1978. In 1985 the Senate Executive Committee appointed a Senate Ad Hoc Committee to "review the procedures, practices and experiences of the Faculty Grievance Commission and to suggest to the Faculty Senate appropriate changes and improvements, if any." The committee members were Robert E. Davies, chair; Adelaide Delluva; Marten Estey; and James Walter, each of whom has chaired the Faculty Grievance Commission.

They asked for comments in *Almanac*, interviewed everyone who expressed a wish to appear before them, considered many suggestions, compared our procedure with that of many other institutions, held 25 meetings of two to three hours length and presented a version to the Senate Executive Committee in 1986. There then followed extensive negotiations with members of the Central Administration and the Council of Deans. The result is the procedure printed here; it has been checked with the Senate Committee on Academic Freedom and Responsibility and approved by the Ad Hoc Committee, the Senate Executive Committee and the Administration. It is now published for comment.

We thank particularly Adelaide Delluva and James Walter of the Ad Hoc Committee, the members of the various committees who made comments, and also Lucienne Frappier-Mazur, Kenneth D. George, Jamshed Ghandhi, Larry Gross, Niels Haugaard, Dell H. Hymes, Jan Lindhe, Seymour J. Mandelbaum, Elliott D. Mossman, Robert H. Mundheim, Elliot B. Platt, Alfred J. Rieber, Anthony R. Tomazinis and all others who made contributions.

*F. Gerard Adams, Past Chair, Faculty Senate  
David P. Balamuth, Chair, Faculty Senate  
Robert E. Davies, Chair-elect, Faculty Senate  
Marten S. Estey, Former-past Chair, Faculty Senate  
Sheldon Hackney, President  
Michael T. Aiken, Provost  
Richard C. Clelland, Deputy Provost*

# Faculty Grievance Procedure

## I. Applicability

a. This grievance procedure shall be available to any member of the standing faculty, standing faculty-clinician educator, associated faculty, academic support staff, or compensated emeritus faculty at the University of Pennsylvania.\*

b. A grievance is a claim that action has been taken which involves a faculty member's personnel status or the terms or conditions of employment and which is: (1) arbitrary or capricious; (2) discriminatory with regard to race, color, sex, sexual or affectional preference, age, religion, national or ethnic origin, or handicap; or (3) not in compliance with University procedures or regulations.

## II. Faculty Grievance Commission

a. There shall be a Faculty Grievance Commission (the commission) composed of three members of the standing faculty holding the rank of professor. They shall be appointed by the Senate Executive Committee for staggered three-year terms expiring June 30. These three members shall serve serially as chair-elect, chair, and past-chair of the commission. The cost of any compensatory release from teaching should be provided from central University funds as needed.

b. The chair of the commission shall be the primary administrator of the Faculty Grievance Procedure. The past-chair shall serve as presiding officer at grievance hearings. The chair-elect will observe the functions of the commission and may attend hearings. Each member of the commission may substitute for another member when a member cannot serve because of a conflict of interest or for other reasons. If a member or members of the commission cannot serve for whatever reason, the commission, with the advice of the chair of the Faculty Senate, may replace its missing members with former commission members who still hold compensated faculty appointments.

c. There shall be an independent legal officer to assist the commission in its operations. The legal officer's appointment and terms of employment shall be jointly determined by the chair of the Faculty Senate and the provost. Once appointed, the legal officer's professional responsibility shall be to the commission.

d. There shall be a hearing list consisting of at least 30 persons selected by the Senate Executive Committee from members of the standing and associated faculties. The list shall be broadly representative of these faculties and include women and members of minority groups. It shall not include faculty members holding administrative appointments at the level of department chair or above. Faculty members shall serve on the hearing list for three-year terms expiring on June 30. Appointments shall be made by May 30 of each year and arranged so that the terms of approximately one-third of the members shall expire each year. Replacements shall be selected by the Senate Executive Committee as needed. At all times during the academic year, a hearing panel, composed of three faculty members and alternates selected by the commission by lot from the hearing list, shall stand ready to hear any grievance that may arise. The first panel for each year shall be selected by June 30 and four succeeding panels shall be named as soon as a grievance is assigned to the standing panel. At least two of the three members of each panel must have tenure.

## III. Pre-Hearing Procedures

a. Before filing a grievance with the commission, a faculty shall first review the complaint with his or her department chair or dean in an effort to effect an equitable resolution. If a resolution is not reached, the faculty member is encouraged to consult with the University ombudsman, the chair of the commission and any other concerned University groups to determine whether the commission is the appropriate body to hear the complaint and whether they can be of assistance in resolving the complaint.

b. Failing to receive satisfaction, the faculty member shall inform his or her dean in writing of the nature of the complaint, of the remedy sought, and of his or her intention to file a grievance with the commission. The faculty member may also request in writing from the dean a

written statement of the reasons for the actions which are the subject of the complaint. The dean's written statement should either be approved by the department chair and the chairs of any panels that have reviewed the case or be accompanied by separate statements from these persons. These written statements should be supplied to the faculty member within two weeks after receipt by the dean of the written request for them. Exceptions to these deadlines may be necessary during the summer months or in extraordinary circumstances.

c. If the faculty member is not satisfied with the dean's response, he or she may file a grievance with the commission after the dean's written statement is due or received. Written notice of the grievance and request for a hearing shall be submitted to the commission through its chair with copies to the provost and the dean. If a grievance is not filed with the commission within thirty days of the receipt of the dean's written statement, the dean may inquire in writing whether the faculty member intends to file a grievance. The grievance shall be treated as abandoned unless it is filed within fifteen days of such inquiry. Exceptions to these deadlines may be necessary during the summer months or in extraordinary circumstances.

d. Since grievances may be cumulative, a faculty member may base his or her grievance on prior as well as current events or conditions. The grievance must be initiated not later than two years after the initial event complained of and not later than four months after the end of the faculty member's compensated faculty appointment.

e. The chair may decide not to proceed with a grievance, for example, because the claim is deemed not to be a grievance as defined in section I.b., because the matter at issue has been the subject of a previous grievance, or because the grievance is of so little consequence or merit that no panel should be created. The faculty member may appeal this decision to the commission as a whole.

f. If the commission believes that the faculty member's claims are primarily concerned with academic freedom, it shall send a copy of the grievance to the Senate Committee on Academic Freedom and Responsibility ("senate committee"), which shall promptly determine whether the grievance raises questions of academic freedom. If the decision is positive, the commission shall not hear the matter. If the complaint is brought against a University administrator or involves more than one school or University policies of general interest, the Senate committee shall have jurisdiction. If the complaint concerns matters occurring in one school, the chair of the Senate committee shall forward the grievance to the chair of the appropriate school committee on academic freedom and responsibility which shall have jurisdiction in this matter.

g. Once the chair has decided to proceed with the grievance, the chair shall so inform in writing the presiding officer, the grievant, the dean, and the provost and shall ask the provost to name, within two weeks, the University's representative (the respondent) who shall act on behalf of all the persons complained of. "Person or persons complained of" might include: chairs of departments, department personnel committees, deans of schools, school personnel committees, the provost, and the president. The respondent shall normally be drawn from the hierarchy of those responsible for the action complained of. The grievant and the respondent may each designate a University colleague if they wish to do so. The grievant's colleague may be any member of the standing, associated or emeritus faculty; the respondent's colleague must be selected from the group of persons who are eligible to serve on panels. A colleague may not serve as a legal advocate; rather, the colleagues aid the grievant and the respondent in preparation and presentation of their respective cases. The chair shall inform all parties of the names of the grievant, the respondent and the colleagues, if any.

h. Where more than one entity was responsible for the action complained of, the respondent and his or her colleague shall consult with representatives of each such entity and involve them from the beginning in the planning and execution of the response.

i. The commission on its own motion, or on the motion of the grievant or respondent, may disqualify individuals from service on a particular panel for reasons such as having potentially biasing relationships to those involved in a case or having taken a position on the merits of a case. The grievant and the respondent may each exercise up to two peremptory

\* Members of these classes are henceforth referred to in this document as "faculty" or "faculty members."

challenges. Requests for disqualification must be submitted to the commission within one week after the grievant and respondent are told the names of the panel members. Replacements for disqualified panel members shall be drawn by lot by the chair of the commission from the three alternates with due regard for the tenure requirement of Section II.d. Disqualified panel members shall remain on the hearings list.

j. The name of a faculty member who has served on a panel shall be removed from the hearings list at the completion of such service and shall not appear again on the hearings list until three years after the end of his or her period of service. Faculty members selected as members of a panel shall serve until the completion of that grievance even if the hearings extend past the time they would otherwise have left the hearings list. The names of alternates who serve for a year in that capacity without serving on a panel shall be returned to the hearings list for the balance of their terms.

#### IV. Hearings

a. Hearings should begin within one month of the acceptance of a grievance by the commission. The decision on the merits of a grievance will be made by the panel after hearings in which the grievant and the respondent have the opportunity to present their cases. Hearings shall be chaired by the presiding officer, assisted by the legal officer who shall be present whenever possible at all hearings to see that proper procedures are followed. Arguments, oral and documentary evidence and witnesses will be presented first by the grievant and then by the respondent. Whenever possible, each side and its witnesses should submit evidence and arguments in written form for prior distribution to the other side and to the panel. Conference calls may be used to facilitate the presentation of evidence.

b. The presiding officer shall have the power to call witnesses and to introduce documents and shall, at the request of the panel, obtain expert opinion from inside or outside the University. Each side shall have the right to address questions through the presiding officer to witnesses introduced by the other side. Members of the panel, when recognized by the presiding officer, may question witnesses. A majority of the panel must be present at all times during each hearing. It is the responsibility of the grievant and the respondent to ensure the presence of their witnesses at times deemed appropriate by the legal officer. Neither the grievant nor the respondent may present evidence to the panel unless the other is present except for reasons of confidentiality as determined by the presiding officer with the advice of the legal officer. One and only one tape recording shall be made of the hearings. This recording shall be kept in the custody of the commission. The panel, the grievant, the respondent and their colleagues shall have reasonable access to these tapes during the processing of a grievance. No copies of the whole or part of any tape may be made without express permission of, and supervision by, the commission. Such permission shall be granted to the provost when he or she requests copies in connection with pending or threatened legal action.

c. A hearing shall follow an agenda prepared by the legal officer that is based on demonstration of relevance by the grievant or the respondent. An important function of the legal officer is to advise the commission as to the admissibility or relevance of issues, oral statements and other evidence presented. However, the final decision on admissibility or relevance shall be made by the commission by majority vote.

d. The legal officer and the commission shall have access to all documentary evidence that is in the custody of or under the control of the person or persons who took the action complained of or of the grievant and that is deemed by the commission to be relevant to the grievance. The presiding officer and the legal officer have the authority to obtain additional documents including the dossiers of other comparable members of the same department, or if there are none such, comparable members of the same school who are alleged to have recently or currently received more favorable treatment. ["Comparable" here means comparable for the issue(s) involved in the grievance and shall be determined by the commission on the basis of evidence presented.] Notice is to be given to those faculty members whose dossiers are to be examined. The panel may request the presiding officer to obtain expert opinion from inside or outside the University.

e. If documentary evidence is needed by the grievant or the respondent in the preparation of his or her case, or by the panel in the course of its deliberations, application shall be made to the presiding officer. The presiding officer, with the advice of the legal officer, shall determine,

subject to appeal to the commission, whether the evidence requested is relevant. (See Note 1 below.) The legal officer shall then obtain all evidence deemed relevant. All such evidence shall be available to the panel, the respondent, the colleagues and, subject to the restrictions of confidentiality, to the grievant. (See Note 2 below.)

f. Like all other members of the faculty, members of departmental or school personnel committees or subcommittees have the right to testify in grievance hearings as a matter of personal choice and are encouraged to do so. However, they will neither be required to testify nor prevented from so doing. Members of such committees who agree to appear in grievance hearings may testify specifically about their own participation in committee deliberations, present the committee's vote, and give a general characterization of its discussion. They are explicitly prohibited from disclosing direct quotations, positions, or votes of other individuals on these committees.

g. Unreasonable delays by either side are subject to sanctions. In cases where primary blame for the delay may be attributed to one side, the commission has the right to suspend or terminate proceedings and recommend that the panel send to the provost an accusatory report including reasons for this suspension or termination and recommendations for action. A copy of this document shall be sent to the chair of the Faculty Senate.

h. The commission may establish further rules and procedures to govern its operations. Where procedures have not been adopted, the presiding officer may rule on the matter with the advice of the legal officer. Appeals from rulings established in this way may be presented to the Senate Executive Committee to be decided by majority vote. Procedures adopted under this provision should be included in the commission's annual report.

#### V. Findings

a. Upon conclusion of the hearings and after consultation with the legal officer and the presiding officer concerning the format of the report, the panel shall prepare a written report to the provost which may include a minority opinion. The report shall state each element of the grievance and in separate, clearly labeled sections record the findings of fact and the recommendations for action by the provost.

b. As part of its recommendations, the panel may propose remedies. In cases where reappointment, promotion or tenure has been denied, it may recommend a full review and reevaluation of the case. The panel may also suggest to the provost procedures that might be followed in such a reevaluation, but the choice of procedures remains with the provost. However, a panel shall not have the responsibility or the authority to evaluate professional competence either in the case of an individual or in comparison with other individuals. If the provost, on receiving the panel's report, decides that a reevaluation will be carried out, he or she will ensure that the recommendations of the panel and the relevant supporting documentation are included in the documents considered in that reevaluation.

c. The presiding officer shall distribute the panel's report to the provost, the dean, the grievant, the respondent, the person or persons who took the action complained of, and the chair of the Faculty Senate. If the provost wishes to consult with the presiding officer to obtain more information about the case, the presiding officer will provide details and make available the full documentation, including copies of the hearing tapes.

d. If the grievance is withdrawn or settled prior to the completion of the hearings, the presiding officer shall dismiss the panel with thanks, and no report will be prepared. However, if the hearings are completed and the panel submits a report to the provost, the presiding officer shall be informed by the provost when final action on the grievance has been taken within the University. The presiding officer shall then dissolve the panel.

e. After the receipt of the panel's final report, the presiding officer shall return all borrowed documents to their owners and turn over to the chair of the commission for retention in a locked cabinet a complete file of the case—including one complete set of documents and the tape recordings of the hearings. The presiding officer shall destroy all other copies of the documents used by the panel. The confidentiality of peer evaluation materials, including outside letters, shall be preserved by the commission. Except when the chair of the commission determines otherwise, the complete file shall be sent to the archives for permanent storage accord-



ing to the University archives policy three years after final action on the grievance within the University. However, the panel's report shall be kept permanently on file along with the provost's response.

f. While the panel's report is to be accorded great weight, it is advisory to and not binding upon the provost. The provost's decision shall be made and communicated in writing within six weeks to the chair of the commission, the grievant and the respondent. In the event the provost declines to implement one or more of the recommendations, the written communication shall include the detailed reasons and shall be sent also to the chair of the Faculty Senate.

g. If the grievance proceeding identifies an administrative action or practice that seemingly violated University procedures or otherwise led to inequitable treatment, the commission on behalf of itself or the panel should bring the matter to the attention of the provost and the chair of the Faculty Senate. The provost and the chair of the faculty senate should examine the matter and see to it that appropriate corrections are made if needed. Within six months they shall inform the Senate Executive Committee concerning the problem and its resolution.

## **VI. Confidentiality**

a. The work of the commission and its panels requires the highest level of sensitivity to the privacy of all concerned. Members of the commission, members of panels, grievants, respondents, colleagues, witnesses and all other concerned parties have the moral obligation to maintain confidentiality with respect to oral and documentary evidence presented and deliberations occurring during the processing of grievances (except as necessary for the preparation of a grievance or as subject to legal process, or as otherwise noted in this document). Any breaches of confidentiality will be reported by the chair of the commission to the provost and the chair of the Faculty Senate. In the event of a breach of confidentiality, the commission has the right to terminate proceedings; in such a case it may advise the panel that it should send to the provost its recommendations in a report giving great weight to the breach.

b. Except as otherwise provided in this document or as authorized by the provost or the chair of the Faculty Senate, the report of a panel shall be treated as confidential by all participants in a grievance hearing and by all members of the University community.

## **VII. Hearings by Senate Committee on Academic Freedom and Responsibility**

a. In cases in which reappointment, promotion or tenure has been denied to the grievant, and in which the provost has declined or failed to implement the recommendations of the panel and only in such cases, the grievant, within one month after the issuance of the provost's response, may request a hearing before the Senate Committee on Academic Freedom and Responsibility. The report of the panel and the provost's decision shall be made available to the Senate committee which will then decide whether or not to hold a hearing. The Senate committee shall also have access to all evidence presented to the panel and to the records of the grievance hearings.

b. The Senate committee shall follow as far as possible procedures consistent with section IV for the conduct of its hearing. However, the parties shall not be permitted to introduce evidence presented before the panel, and the findings of fact made by the panel shall be binding unless the senate committee finds they were not supported by substantial evidence. The Senate committee shall issue an opinion as to whether the provost's action in declining or failing to implement the recommendations of the panel was reasonable under the circumstances. If the Senate committee finds that there is significant evidence that was not previously available to the party asserting its relevance, it may return the case to the presiding officer for reconsideration by the panel.

c. The Senate committee shall promptly report its findings and recommendations to the president with copies to the provost, the chair of the commission, the panel, the chair of the Faculty Senate, the grievant and the respondent and *Almanac* for publication.

## **VIII. Expenses**

The commission's necessary and proper expenses for processing a grievance, including compensation for the legal officer, shall be met from University resources. It shall be the responsibility of the presiding officer to determine what is necessary and proper; such expenses shall not include any per diem expenses, released time charges or travel expenses

for any participant in the hearings, except as provided in IIa and IIc. To the extent possible, administrative and secretarial services shall be provided by the office of the Senate. Services that cannot be provided in this way and other necessary and proper expenses should be charged to the Faculty Senate. These charges shall be under the administration of the chair of the grievance commission.

## **IX. Annual Report**

At the end of each academic year, the commission shall write a report describing its activities and giving an account of the cases completed or in progress with due regard for the maintenance of confidentiality. The report shall be sent to the president, the provost, the chair of the Faculty Senate and *Almanac* for publication.

### **Note 1**

The confidentiality of peer evaluation materials, including letters of recommendation and evaluation, is integral to the tenure process. Accordingly, while the legal officer and the commission may obtain peer evaluation materials, if during the hearings, the grievant asks that such materials be presented to the panel, before requesting such materials, the presiding officer shall consider the following in such a way as to balance the interest in confidentiality against the interest in disclosures.

a. Has the grievant shown cause for the panel to believe that it is sufficiently likely that the grievance is well-founded to justify examination of confidential peer evaluation materials?

b. Is examination of confidential peer evaluation materials essential to reach a judgment concerning the substance of the grievance? Or is other evidence available that could be used by the panel in making its determination without necessitating review of confidential peer evaluation materials?

### **Note 2**

Special care must be taken in the examination of confidential peer evaluation materials, including letters of recommendation and evaluation and other documents that disclose individuals' opinions of candidates for promotion. Of course, both sides involved in a grievance may stipulate that such materials are irrelevant. Or the grievant, in unusual cases, may already have had access to these materials through procedures unrelated to the grievance, for example from the author of the document. In either of these cases, the question of the grievant's access to the confidential materials will not arise. In all other cases the grievant will not have access to the materials. With respect to letters of recommendation and evaluation concerning the grievant or other members of the faculty, the presiding officer must determine, in accordance with the considerations outlined in Note 1 above, whether the letters should be examined. If so, the panel shall separately consider the following issues in such a way as to protect confidentiality and to further the broader interests of the University.

a. Did the department or other parties to the decision make a reasonable effort to obtain the views of experts not biased for or against the grievant? The presiding officer may let the grievant examine and testify on a list of names that includes but is not limited to people who made the assessments; the panel may also compare the letters obtained at its behest, if any, with the original set.

b. Did the requests for the letters of recommendation and evaluation ask for a fair review or did they imply that confirmation of a pre-existing judgment was desired? The panel may examine any written requests for letters and may inquire of the letter writers or other relevant knowledgeable parties.

c. Do the views expressed in the letters, after consideration of the reputations of the writers and after comparison with evaluations of other comparable persons currently or recently promoted or tenured in the department or, if necessary, school (under the conditions of Section IVd.) give rise to concern that improper discrimination or other grounds for grievance may have been involved?

If the grievant has a colleague who has agreed to maintain complete confidentiality with respect to all information contained therein, the colleague shall be given access to the letters and may question witnesses about the contents of the letters when the grievant is not present. If the grievant does not have a colleague, the letters shall not be disclosed to the grievant; however, the legal officer shall provide the grievant with a reasonable indication of the tenor of the material therein contained, without disclosing details or identifying the authors.