

Appendix E

Dispute Resolution Procedures

Faculty members who believe they have a qualified employment dispute that warrants filing a petition under provision 2.0 of this policy statement will be expected to have already discussed their objection with their unit administrator and other appropriate administrators.

- 1. Filing of Dispute Resolution Petition.** Faculty members who feel that they have a qualified employment dispute may submit a petition to the Chair of the Faculty Council for examination of their objection. The petition shall set forth in detail the nature of the objection and the specific remedial action or relief sought, and identify the specific administrator(s) who should respond to the petition (the respondent(s)). It shall contain all pertinent facts and/or opinions, any circumstantial evidence which the petitioner deems pertinent to the case, and a brief summary of the results of previous discussions on the issues involved.

Objections related to specific personnel action(s) must be presented to the Chair of the Faculty Council within sixty (60) calendar days of the date when the faculty member was formally notified of the action(s).

- 2. Initial Review and Recommendations.** Upon receipt of a faculty member's petition for resolution of a dispute, the Chair of the Faculty Council shall refer the petition to a review committee composed of a Chair that is selected from past Chairs of the Faculty Council who is an active faculty and who does not have administrative duties of more than 25% FTE and two (2) other members. The Chairs of the Faculty Council shall select the remaining committee members from a pool of past Chairs of the Faculty Council who are currently active faculty. If there are fewer than six (6) past Chairs available for the selection, past Secretaries of the Faculty Council who are currently active faculty and also have no more than 25% FTE of an administrative appointment will be included in the selection pool. Only one of the committee members shall be allowed to have an administrative appointment. It is the responsibility of the current Faculty Council Chair to review potential committee members for relevant conflicts of interest. If it is determined a conflict exists, the potential committee member shall be removed from the selection pool. The review committee shall study the dispute resolution petition and confer with the parties to the dispute. If a resolution is achieved, the review committee shall so report to the Chair of the Faculty Council. After such inquiry the committee shall recommend to the Chair of the Faculty Council whether or not a formal dispute resolution hearing is warranted. If so, it shall identify the appropriate administration respondent(s). Its recommendation shall be submitted to the Chair of the Faculty Council, normally within twenty (20) working days after the filing of the petition by the faculty member.
- 3. Action by Chair of the Faculty Council.** Upon receipt of a recommendation from the review committee, the Chair of the Faculty Council shall, within five (5) working days, inform the parties involved in the dispute that either:

- (a) the review committee judges that a full hearing by a dispute resolution committee is not reasonably warranted; or
- (b) a dispute resolution committee will be formed to conduct a formal hearing.

In cases judged not warranting a formal hearing by a dispute resolution committee, the petitioner shall be provided written reasons for the ruling. The ruling may be appealed to the President, normally within five (5) working days. If the petitioner is permitted to pursue the dispute, the ruling of the informal committee shall be included as evidence to come before the dispute resolution committee. For cases in which a dispute resolution committee is to be formed, the Chair of the Faculty Council shall arrange a reasonable time and place for selection of the dispute resolution committee which will afford all parties the right and opportunity to be present during the selection. The dispute resolution committee shall normally be selected within twenty-eight calendar days of the original filing of the petition by the faculty member. The Chair of the Faculty Council shall select faculty committee members randomly from pools of faculty members.

4. Establishment of Pools for Selection of Dispute Resolution Committee. Pools for selection of the dispute resolution committee shall include full-time faculty members as follows:

- (a) men;
- (b) women;
- (c) racial/ethnic minorities;
- (d) Professors;
- (e) Associate Professors;
- (f) Assistant Professors;
- (g) non-tenure track faculty;
- (h) if practical, other characteristics to that of the petitioner, if not included above;
- (i) special positions equivalent to that of the petitioner, if not included above.

5. Composition of Dispute Resolution Committee: Members of the Committee. The dispute resolution committee shall consist of:

- (a) a non-voting chairperson who is a member of the termination hearing board (Section 1.15.1) and is chosen by the Chair of the Faculty Council;

- (b) a voting member who is a unit administrator and unaffiliated with the other committee members and who is appointed by the President from a list of three (3) neutral candidates provided by the Chair of the Faculty Council; and
- (c) four (4) voting members, chosen by stratified random process (names provided by the Office of Institutional Research and Analytics) and consisting of one member from each of two (2) pools to which the petitioner belongs and two (2) additional members who must be tenured faculty members, one (1) Professor and one (1) Associate Professor.

The petitioner who belongs to more than two (2) pools shall be allowed to select the two (2) pools from which one (1) person from each pool is chosen. The petitioner and the respondent(s) shall each be allowed to submit relevant questions to panel members and may challenge one (1) voting member selection for the committee without showing cause (peremptory challenge) and any other voting member selection for cause. Challenges may be made after a full potential committee has been selected. The Chair of the Faculty Council shall exercise reasonable judgment in ruling on the validity of challenges for cause. Members of the unit (department or school) involved in the dispute shall not be eligible to serve on the committee.

6. **Dispute Resolution Committee Chair.** The Chair shall provide committee members with a copy of the petition filed by the faculty member and schedule the first meeting of the committee at the earliest convenient time when all affected parties can be present.
7. **Dispute Resolution Consultant.** At any step in the dispute resolution procedures, the Chair of the Faculty Council may be requested by any of the parties to the dispute or by the committee to serve as a consultant in an advisory capacity without the power of decision in the disputed matter. Additional consultation and advice on special issues or rules of procedure may be provided to the committee by an available attorney from the Board of Regents Office of Legal Counsel and/or a faculty member chosen by the Chair of the Faculty Council from those with experience on past dispute resolution panels or some other specialized issue. Written functional guidelines for dispute resolution committees issued by the VPAA in association with the Board of Regents Office of Legal Counsel shall be followed.
8. **Responsibilities for Serving on Dispute Resolution Committee.** Members of the committee shall serve the best interests of the university and act as neutral examiners of issues presented. Members shall avoid external discussions of the dispute with parties to the dispute resolution process and others.

All members selected shall be expected to serve on the committee except in cases of illness, necessary absence from the campus, service on a termination hearing committee or dispute resolution committee in the current or immediately preceding academic year, or other extreme hardship. The Chair of the Faculty Council shall decide whether a selected committee member should be excused from service upon

their request, and may replace such a member by the same procedure used for the original selection.

9. Hearings Procedures. The following procedures and guidelines should be followed during the hearings.

9.1 The dispute resolution committee shall normally hold its first session within ten (10) working days after it has been formed by the action of the Chair of the Faculty Council. The committee shall hold a joint prehearing meeting(s) with the parties in order to:

- (a) simplify the issues;
- (b) effect stipulations of undisputed material facts or witness statements;
- (c) provide for the exchange of documentary evidence or other information;
- (d) question committee members to determine if disqualifying bias exists; and
- (e) achieve such other appropriate prehearing objectives as will make the formal hearing fair, effective, and expeditious.

9.2 The dispute resolution committee, through its Chair, shall require from the parties involved that they submit to the committee and exchange with the other party(s) within seventy-two (72) hours following the conclusion of the first session:

- (a) a list of witnesses whom they wish to present;
- (b) a written exposition of all relevant facts and/or opinions, as well as circumstantial evidence; and
- (c) documents which they deem pertinent to the case.

9.3 An audio recording of the dispute resolution hearing shall be made. The recording will be accessible upon request to the principal parties involved, the committee, the President, the Board of Regents, and authorized representatives on a "need to know" basis.

Either party to the dispute may request that the committee endeavor to provide a complete or partial typed transcript of the testimony. The cost of preparation of such a transcript shall be paid by the party making the request. Other involved parties may obtain a duplicate copy by paying the current fees for copying.

9.4 Length of hearing sessions may be established in advance; every reasonable effort should be made to conduct the hearing(s) as expeditiously as possible, with equal fairness to both parties.

- 9.5** The faculty member, having initiated the dispute resolution action, must establish by a quality of proof that is clear and convincing that the requested remedial action is justified and called for under the prevailing circumstances. The faculty member shall present their case first, with the affected administrator(s) following.
- 9.6** Both parties shall be permitted during the course of the hearing(s) to introduce additional documents and present witnesses not on their original lists, subject to reasonable notice to the other party and the consent of the dispute resolution committee.
- 9.7** The dispute resolution committee may call witnesses of its own to the hearing and request documents not otherwise introduced by either of the parties.
- 9.8** In cooperation with the Chair of the committee the respective parties are responsible for arranging the presence of their own witnesses and will schedule them for appearance as close to the time of call as possible.
- 9.9** The university shall provide appropriate facilities, assistance, equipment, and support to the committee and shall assist the dispute resolution committee in obtaining the cooperation of witnesses and making available non-confidential documentary and other evidence. The personnel records of the petitioning faculty member shall be accessible to the parties, dispute resolution committee review authorities and their representatives.
- 9.10** The parties shall be permitted to utilize legal counsel who shall be allowed to participate indirectly in all appropriate portions of the hearings. The dispute committee shall consider such counsel's statements on procedural matters and may receive the opinion of its own counsel. Counsel will not question witnesses or make opening or closing statements.
- 9.11** The dispute resolution committee shall not be bound by strict rules of legal evidence, and may admit any evidence which is of probative value in evaluating the issues involved. Every reasonable effort shall be made to obtain the most reliable evidence available.
- 9.12** The committee report's findings of fact and any recommendations shall be based solely on relevant evidence contained in the hearing record and reasonable inferences drawn therefrom.
- 9.13** Except for such simple announcements as may be required, covering the time of hearing and similar matters, public statements and publicity about the case by either the faculty member, affected administrators(s), or their representatives, shall be avoided so far as possible until the proceedings have been completed, including the submission of the advisory report of the dispute resolution committee to the Chair of the Faculty Council, the petitioning faculty member, and the respondent administrator(s).

- 9.14** The hearings and the report of the dispute resolution committee shall normally be completed within forty-five (45) working days (based on the academic calendar) of the formation of the dispute resolution committee. In any case in which the committee deems this time schedule to be inadequate the Chair of the dispute resolution committee shall notify the principal parties involved in writing of the amended time schedule.

10. The Report of the Dispute Resolution Committee.

- 10.1** In preparing its report the dispute resolution committee shall specifically cite the information upon which its advisory conclusions were based.

The written report shall contain:

- (a) a statement of the purpose of the hearing(s);
- (b) issues considered;
- (c) findings of fact; and
- (d) relevant advisory recommendations.

- 10.2** The dispute resolution committee shall submit its report via the Chair of the Faculty Council to the parties involved in the dispute, and

- (a) If the dispute is directed against a unit administrator¹³, the report of the dispute resolution committee shall be submitted to the dean of the petitioning faculty member's college. If the dean concurs with the report of the committee, the case will be resolved by the dean through the implementation of the committee's recommendations.

If the dean disagrees with the report of the committee, the dean shall return the report to the committee with the specific concerns stated in writing.

The committee will then reconsider the case, taking into account the dean's concerns and reviewing new evidence with the parties if necessary and practical. If the positions of both the dean and the dispute resolution committee cannot be reconciled, the report of the committee and the dean's written objections to the committee's report shall be forwarded to the VPAA for a decision and action.

- (b) If the dispute is directed against both a unit administrator and a dean, or against a dean only, the report of the dispute resolution committee shall be submitted to the VPAA.

¹³ For purposes of the dispute resolution procedure a unit administrator is one who administers the affairs of a unit within a college.

If the VPAA concurs with the report of the dispute resolution committee, the case will be resolved by implementation of its recommendations. Otherwise the VPAA shall return the report to the committee with specific concerns stated in writing.

The committee will then reconsider the case, taking into account the VPAA's concerns and reviewing new evidence with the parties if necessary and practical. If the positions of both the VPAA and the dispute resolution committee cannot be reconciled, the report of the committee and the VPAA's written objections shall be forwarded to the President of the university for a decision and action.

- (c) If the faculty member's petition is directed against the VPAA or against the VPAA and another administrator, the dispute resolution committee report shall be submitted to the President of the university for decision and action.

If the President concurs with the report of the committee, the case will be resolved by implementation of its recommendations. If the President disagrees with the report of the committee, the President will return it to the committee with specific written concerns.

The committee will then reconsider the case, taking into account the President's concerns and reviewing new evidence with the parties if necessary and practical. If the positions of the President and the committee cannot be resolved, the President's decisions will stand, unless the faculty member appeals the decision to the Board of Regents, bearing in mind that access to the Board's appellate procedure is not automatically granted and that the procedure may be revised by action of the Board of Regents.

"The hearing of appeals is mandatory only in cases involving termination of tenured professors. Appeals arising from other categories may be allowable at the discretion of the board."¹⁴

A copy of the procedures for appeal to the Board of Regents is available on request from the Board of Regents Chief Executive Officer or on the Board of Regents website.

At each step in this process the administrator or committee involved should normally complete its responsibility within ten (10) working days (based on the academic calendar).

¹⁴ "Board Policy 1.16, Board Appellate Procedures, available at <https://regents.okstate.edu/policy-manual/section-1/policy-manual-board-appellate-procedures.html>.