

## APPENDIX

### MODEL HEARING PROCEDURE

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#### ARTICLE 1. INTRODUCTION

- 1.1 General. This document provides a standard operating procedure for formal hearings to resolve conflicts at institutions of higher education. This procedure may be incorporated in another procedure by reference, either as is or with appropriate modifications as set forth in the other procedure.

This procedure may also be used on an ad hoc basis to handle individual situations where the decisionmaker determines that a formal hearing is an appropriate means to resolve the issue in question. In such case the decisionmaker will inform the parties in writing that this Procedure will be followed, and will specify any variations from this Procedure.

Normally, a hearing will be held only after the parties and appropriate institutional officials have attempted to resolve the dispute informally.

- 1.2 Definitions. For purposes of this Procedure, the person initiating the grievance or challenging an earlier decision is the "complainant;" the person responding to the grievance or seeking to uphold the earlier decision is the "respondent." This Procedure assumes that a hearing panel has been appointed by the appropriate authority and that an Administrator has been designated to serve the panel.

#### ARTICLE 2. PREHEARING MATTERS

- 2.1 Preparation of Evidence.

2.1.1 If any material facts are believed to be in dispute, the parties shall prepare evidence for the hearing which may be in the form of documents, testimony of

witnesses, or other materials.

2.1.2 All members of the institutional community shall cooperate with the parties' reasonable requests to provide evidence and to appear at the hearing as witnesses.

If a party is having difficulty getting cooperation from a potential witness or source of evidence, he or she shall file a request for assistance with the Administrator, who shall forward it to the panel. If the panel determines that the request is reasonable, it shall assist the party in gaining the necessary cooperation within the community.

2.2 Notice Requirements. At least five (5) working days before the hearing, each party shall provide the Administrator with \_\_\_\_ copies (1 for the Administrator, 1 for the other party, and \_\_\_\_ for the panel) of the following information, who shall distribute copies to the other party and to the panel:

2.2.1 A list of intended witnesses, or a statement that no witnesses will be called. The panel may place reasonable limitations on the number of witnesses, either before or after the list is submitted, but in no event more than three (3) working days prior to the hearing. No witnesses other than those on the list may testify without the consent of the panel.

2.2.2 Any witness statement submitted pursuant to Section 3.5.

2.2.3 The name of any advisor appearing with the party at the hearing and whether the advisor is an attorney. A party may not bring an advisor without such notification, unless one of the following exceptions applies.

2.2.3.1 A party may bring any advisor if the other party and the Administrator or Panel consent.

- 2.2.3.2 If a party does not designate an advisor, and the other party designates a non-attorney advisor, the first party may bring a non-attorney advisor without prior notification.
- 2.2.3.3 If a party does not designate an attorney advisor and the other party does designate an attorney advisor, the first party may bring an attorney advisor without prior notification.
- 2.2.4 Whether the party requests that his advisor be allowed to present the case, in whole or in part
- 2.2.5 Whether the party requests a public hearing. The hearing shall be private unless both parties agree to a public hearing.
- 2.2.6 Copies of documents the party plans to introduce into evidence. No other documents may be introduced into evidence without notification unless the other party or the Panel consents. Approval of the Panel shall depend on the importance of the document, whether the party could have obtained it earlier, the time remaining until the hearing, and the degree of prejudice to the other party.
- 2.3 Order of Arguments and Evidence. The panel may, at least three (3) days before the hearing, specify the order in which the parties present their arguments and any evidence. If the panel does not specify within this time frame, the order specified in Section 3.4 shall be used.
- 2.4 Pre-Hearing Conference. After receipt of the information specified in Section 2.2, the Administrator and/or the Chair of the hearing panel may meet with the parties and/or their advisors to consider clarifying or simplifying the issues to be heard by the panel, answering any procedural questions, limiting the number of witnesses, or considering any other matters which may aid the conduct of the hearing.

### ARTICLE 3. HEARINGS

3.1 Evidence. If any material facts are in dispute, the parties may testify and may present testimony of other witnesses and introduce and explain documents and other evidence at the hearing. The panel may exclude unfair and irrelevant evidence, but is not required to follow judicial rules of evidence.

The panel may require the production of further evidence beyond that presented by the parties (including the testimony of other witnesses) if it believes such evidence is available and material to the issues in dispute. Either the parties or the Administrator may be asked to obtain such evidence. The hearing shall be resumed when such evidence is produced.

3.2 Absent Parties. All panel members and both parties shall be present at hearings. Failure by either party to appear at the hearing may be grounds for summary finding against the absent party. Alternatively, the Panel may choose to proceed with the hearing without the absent party, and make its decision based upon the evidence available. Failure to comply with the notification provisions of Section 2.2 may be construed as failure to appear, for the purposes of this section. Upon request of the absent party, a finding made under this section may be set aside and a new hearing scheduled if the absentee shows he or she could neither attend the hearing nor request a postponement of the hearing in a timely manner.

3.3 Advisors. Each party may have one advisor at the hearing, who may be an attorney. Parties may consult freely with their advisors throughout the hearing, but advisors may not speak for the parties unless the panel determines that one or both parties are unable fairly to present their case except through their advisor.

3.4 Order of Evidence. The panel may, pursuant to Section 2.3, determine the order in which the parties present their arguments and any evidence. If the panel does not specify, the following order shall be used:

- (1) complainant presents his or her case;
- (2) respondent presents his or her case;
- (3) in the discretion of the panel, rebuttal by complainant and respondent may be allowed;
- (4) complainant makes closing arguments;
- (5) respondent makes closing arguments.

With permission of the panel, evidence may be introduced out of order and additional evidence may be introduced.

3.5 Witnesses. The parties may present the testimony of witnesses in support of their case.

When a witness is unable to attend a scheduled hearing, the witness may make an affidavit which may be introduced at the hearing. The affidavit shall be disclosed to the other party pursuant to Section 2.2.2 in order to permit the other party to contact the witness and to prepare for appropriate rebuttal at the hearing. The panel shall exclude the affidavit if the other party has been unable to secure the cooperation of the witness in spite of diligent attempts to do so.

The parties and panel members shall have the right, within reasonable limits set by the panel, to question the parties and all witnesses who testify orally. Reasonable limits may include requiring that questions be directed through the panel.

3.6 Record of Hearing. The Administrator shall make a tape recording of the proceedings. The parties and their representatives may listen to the tape. At a party's request, the Administrator shall provide the party with a duplicate of the tape at the party's cost.

The record of the hearing shall consist of the tape recording and all physical items or documents introduced as evidence. The record shall be kept by the Administrator for five years after all appeals have been concluded or after the time for appeal has expired.

3.7 Written Arguments. After hearing the evidence, the panel may request or accept written arguments from the parties and defer consideration of the case for up to two weeks until such written arguments have been submitted. Each party shall submit five copies of such written arguments to the Administrator, who shall distribute them to the other party and the panel. Time limits for the panel's decision shall be extended accordingly.

#### ARTICLE 4. GENERAL PROVISIONS

4.1 Time Limits. For good cause, the panel shall extend any time limit set forth in these rules. Good cause shall include the fact that a time limit includes finals week or periods such as vacations, holidays, or intersessions if parties or decisionmakers are absent from the institution. Any time extension shall be communicated in writing to all interested parties along with a new written schedule.

4.2 Absent Party. If one party is absent from the institution, the decisionmaker, with both parties' permission, may permit the absent party to participate in a hearing or interview by conference call or otherwise.

4.3 Mailing. All documents sent by the Administrator to the parties shall be sent by certified mail or personal delivery.