Whenever possible, faculty reduction will be accomplished

through attrition.

The Provost has primary responsibility for the academic operations of the University.

**Neutral** : The ombudsman seeks processes that are fair and equitable to all parties. The Office provides an impartial and objective resource for the University community.

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**APPENDIX N: OMBUDSMAN AND FACULTY**

**HEARING COMMITTEE**

|  |  |  |  |
| --- | --- | --- | --- |
| When arbitration is required, grievances shall be referred to a single arbitrator.  The arbitrator shall be appointed by the agreement of the President of the University and the Member/President of the Association within five (5) working days after the President has received notice of referral.  Failing agreement within those seven days, the arbitrator shall be appointed by a Judge of the Alberta Court of Queen's Bench upon the Petition of either party. | | | |
| 22.11 | For the purposes of Article 22, and subject to the particular provisions below, the arbitrator shall conduct the arbitration and assign the costs of arbitration in accordance with the provisions of the Arbitration Act of the Province of Alberta: | | |
|  | | (a) | The arbitrator shall have no power to add to, delete, or otherwise amend this Handbook. |
|  | | (b) | The arbitrator shall confine him/herself to the grievance submitted for arbitration and shall have no authority to determine any other issues not so submitted to him/her. |
|  | | (c) | When dealing with a grievance involving claim of noncompliance with procedural requirements, if the arbitrator  finds  that  the  procedural requirements have not been complied with, he/she shall be limited to directing that the matter be reconsidered by the appropriate body in accordance with the procedures specified in the appropriate article. |
|  | | (d) | The arbitrator shall hear the grievance and issue a decision which shall be final and binding upon the parties to the arbitration. |

The Ombudsman has access to all information and all individuals in the organization, as permitted by law.

The Ombudsman is neutral, impartial, and unaligned.

The Ombudsman strives for impartiality, fairness and objectivity in the treatment of people and the consideration of issues. The Ombudsman advocates for fair and equitably administered processes and does not advocate on behalf of any individual within the organization.

The Ombudsman has a responsibility to consider the legitimate concerns and interests of all individuals affected by the matter under consideration.

The Ombudsman holds all communications with those seeking assistance in strict confidence and takes all reasonable steps to safeguard confidentiality, including the following:

The Ombudsman does not reveal, and must not be required to reveal, the identity of any individual contacting the Ombudsman Office, nor does the Ombudsman reveal information provided in confidence that could lead to the identification of any individual contacting the Ombudsman Office, without that individual’s express permission, given in the course of informal discussions with the Ombudsman; the Ombudsman takes specific action related to an individual’s issue only with the individual’s express permission and only to the extent permitted, and even then at the sole discretion of the Ombudsman, unless such action can be taken in a way that safeguards the identity of the individual contacting the Ombudsman Office. The only exception to this privilege of confidentiality is where there appears to be imminent risk of serious harm, and where there is no other reasonable option. Whether this risk exists is a determination to be made by the Ombudsman.

Mediation is a process in which an impartial person, the mediator, facilitates communication between disputing parties to promote reconciliation, settlement and understanding.

*The Ombudsman is a designated neutral, neither an employee nor a management advocate. In addition to the explicit responsibilities detailed below, the Ombudsman is empowered to facilitate the timely and equitable adjudication of faculty or administrative grievances and, via the Faculty Senate and Office of the President, to recommend changes in the policy itself.*

The arbitrator shall not have the authority to add to, subtract from, modify, or alter the terms or provisions of Board of Governors and University rules and regulations governing faculty. The subject of the arbitration shall be confined solely to the application and/or interpretation of these rules and regulations with respect to the precise issues submitted for arbitration. The arbitrator shall have no authority to determine any other issue. Any statements of opinion or conclusions not essential to the determination of the issues submitted made by the arbitrator shall be of no force and effect.

In those instances in which an administrator has made a judgment involving the exercise of discretion, such as decisions regarding tenure, promotion, or merit salary increases, the arbitrator shall not substitute his or her judgment for that of the administrator, nor shall the arbitrator review such decision except to determine whether the decision violated the rules and regulations of the Board of Governors or of the University. If the arbitrator determines that such rules and regulations have been violated, the arbitrator shall submit a report to the President with the findings of fact and recommendations concerning what the arbitrator deems to be appropriate action.

All fees and expenses of the arbitrator shall be divided equally between the grievant and the University. Each party shall bear the cost of preparing its own case. The cost of any transcript of proceedings before the arbitrator shall be divided equally between the parties, and any such transcript shall be provided to the arbitrator, and then to the President. The cost of any additional copies of such transcripts shall be borne by the party requesting same.

*Revised and adopted September 17, 1998*

*Revised September 2001*

I. Purpose

The university, with the concurrence of the Academic Council, has established the position of

ombudsman and the Faculty Hearing Committee (FHC) to facilitate prompt and equitable resolution of

allegations by faculty members and instructional staff that there has been a violation of either:

A. the university's policy concerning academic freedom and academic tenure as set forth in Appendix

C of this handbook; or

B. the university's policy of equal treatment in employment, without regard to race, creed or religion,

color, veteran status, sex, sexual preference, age, national or ethnic origin, or handicap.

The ombudsman and the FHC shall function in accordance with the procedures below.

II. Selection

A. The Ombudsman. The ombudsman shall be appointed for a term of two years by the Academic

Council from the number of active or recently retired members of the faculty. The appointment

may be renewed. The ombudsman shall report directly to the president of Duke University who

shall appropriately compensate the ombudsman and provide reasonable support services.

B. The Faculty Hearing Committee

1. The committee shall consist of twelve tenured faculty members, nominated by the Executive

Committee of the Academic Council and elected by the council at large. In its nominations

the Executive Committee shall seek to present a reasonable representation of the university's

academic community. The Executive Committee shall appoint one member of the FHC to act

as chair.

2. Committee members shall serve for three-year terms, with four being elected to full terms

each year and others elected to one-year or two-year terms to fill vacancies or to begin the

practice of election to three-year terms, and may be reelected. No person shall serve more

than six consecutive years. Retiring members shall nonetheless conclude the cases pending

before them at the time of the expiration of their terms. Vacancies arising during an academic

year may be filled by appointment by the Executive Committee of the Academic Council until

the next regular election of FHC members.

III. Jurisdiction

A. The ombudsman and the FHC shall have jurisdiction to consider complaints from faculty and

instructional staff concerning one or more of the following matters:

1. Dismissal for misconduct or neglect of duty;

2. Termination of appointment prior to its expiration date;

3. Disputed claims by a faculty member to the existence of tenure;

4. Allegations of violation of academic freedom;

5. Allegations of violation of academic due process with respect to an adverse employment or

disciplinary action, including allegations of biased or prejudiced conduct by a decision-maker

of a substantial nature that likely had a material impact on the outcome of the proceedings;

6. Allegations of adverse employment actions involving discrimination on the basis of race,

creed or religion, color, veteran status, sex, sexual preference, age, national or ethnic origin,

or handicap. Adverse employment actions include actions with respect to the member's rank,

salary, fringe benefits, sabbatical and other leaves with or without compensation, workload or

work assignment, promotion, tenure, and extension or termination of employment.

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7. Allegations of damaging instances of harassment directed against the complainant by other

members of the university community after failure of a university officer or agency to resolve

the matter.

8. Appeals from the findings by a harassment grievance hearing panel or the decision by a

responsible official based on such findings.

B.

1. The jurisdiction of the ombudsman and the FHC contained in Paragraph III.A.5. above refers

to procedural rather than substantive issues.

2. While the ombudsman may, at any stage, consider complaints, advise, and attempt

conciliation, the FHC shall consider complaints only when university action is otherwise

complete.

3. In any of the above causes for complaint, failure to act may be considered an action.

IV. Procedures

A. The Ombudsman.

The purpose of the ombudsman is to receive complaints from members of the faculty and instructional

staff, to investigate those complaints, and to attempt to resolve the complaints through conciliation.

1. The ombudsman shall be available to consult with potential complainants and to answer

questions about how properly to file a complaint.

2. Complaints and all supporting evidence shall be in writing. The ombudsman may reject any

complaint that does not adequately identify the nature of the complaint, the evidence to

support the allegations, and the evidence to show a good faith attempt to resolve the

complaint. The ombudsman shall reject any complaint that has been the subject of a previous

proceeding, unless significant new facts are presented. The ombudsman will consult the Vice

President for Institutional Equity on all complaints concerning discrimination, including

those cases where the complaint concerns issues of an academic nature (e.g., tenure,

reappointment, teaching schedule, or the like), but where there is an allegation of underlying

discrimination. The ombudsman, upon request, shall have total access to such university

records, accounts, files, and other sources of information as may be pertinent to the complaint

or respondent's reply.

3. The complaint shall be filed with the ombudsman as soon as possible after the occurrence of

the action that is the subject of the complaint. The complaint shall:

a. Identify the complainant and the respondent;

b. State the action(s) complained of and whether all action is considered complete or still in

process;

c. Specify the nature of the complaint;

d. Identify all efforts by the complainant to resolve the dispute;

e. Propose a desired remedy;

f. Include such attachments, exhibits, and statements in support of the complaint as can

reasonably be included;

g. Name any persons thought contributory to decisive action who are also to be considered

hostile toward or biased against the complainant.

4. In cases involving dismissal or termination, the respondent is the president or the president's

designate. In other cases the respondent designated by the ombudsman will usually be the

chair of the department in which the complainant is a member, unless the action complained

of was taken despite a departmental recommendation favorable to the complainant, in which

case the committee chair or individual responsible for the adverse action is the respondent.

Where there has been no department recommendation, the ombudsman will designate the

individual or committee who is the respondent. Complaints shall be brought by individuals

and not on behalf of a class.

5. The ombudsman has sixty days from the filing of a complaint within which to investigate the

complaint and, if appropriate, attempt conciliation. After receiving a written complaint and

undertaking any necessary preliminary investigation, the ombudsman is to consult with the

chair of the FHC or designee to determine the most suitable means of dealing with the case,

which may include but are not limited to deciding that neither further investigation nor

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conciliation is warranted; that further investigation would be warranted, with or without

attempted conciliation; and that conciliation should be attempted. Whether conciliation is not

attempted or is attempted and fails, the ombudsman shall so notify the complainant and also

inform the complainant of the right to seek redress from the FHC.

6. When attempting conciliation, the ombudsman shall confer and discuss the complaint with

appropriate academic officers and submit to them, orally or in written form, any relevant facts

and recommendations.

7. If conciliation is not attempted or is attempted and fails and the complainant seeks redress

from the FHC, the ombudsman shall prepare and forward to the FHC a summary of relevant

facts, identifying the respondent considered most appropriate, together with any additional

subsidiary respondents named in IV.A.3.g. The ombudsman shall append to this factual report

a copy of the complaint and any other relevant documents.

8. Except as called for in IV.A.7. above, or required by law, the ombudsman shall not disclose

information of a private or confidential nature obtained in the course of these proceedings.

B. The Faculty Hearing Committee

1. Upon receipt of a report from the ombudsman, the chair of the FHC may require written

response to the grievance from any or all respondents named, and additional written

submissions from either party, to focus the area of disagreement between the parties. Failure

of timely response shall be grounds for finding against the non-responsive party. When the

president is a respondent, and is represented by a non-responding representative, the president

shall have reasonable opportunity to name another representative.

2.

a. If the chair of the FHC considers that a complaint falls within the jurisdiction of the FHC,

as specified in section III above, the chair of the FHC shall appoint a panel to conduct a

hearing (if the panel decides that a hearing is necessary), to prepare a report, and to make

recommendations. If the chair of the FHC considers that jurisdiction is in question, that

question shall be decided in a meeting with at least two other members of the FHC. If

there is a finding of jurisdiction, the chair shall appoint a panel to conduct a hearing (if

the panel decides that a hearing is necessary), to prepare a report, and to make

recommendations. If the finding is that the complaint is not within FHC jurisdiction the

chair shall report that conclusion of the complaint to the complainant. To the extent

possible, panels shall be drawn from the current members of the FHC, and it is advisable

that at least one member of each panel be trained in law. The chair of the FHC shall

notify both parties of the names of the panel members. Either party may challenge a panel

member on grounds of personal interest or bias. If the chair agrees that a challenge is

appropriate, the chair shall appoint a replacement panel member. The chair shall

designate one of the panel members to act as presiding officer. The chair shall notify the

complainant and the respondent of the membership of the panel and of the presiding

officer.

b. Except in cases of denial of tenure or denial of reappointment, where panels should

include five members, the chair of the FHC has discretion, after notifying both parties

and considering any objections, to name panels of only three members in cases where

time available, work loads, and FHC member availability make it necessary. Former FHC

members may also be appointed in cases of such necessity.

3.

a. If a panel deems a hearing necessary, it shall be held as expeditiously as possible at a

time and place mutually agreeable to the hearing panel, the complainant, and the

respondents. In case of dispute, the presiding officer shall set the time and place.

b. The hearing shall be conducted in private unless the complainant and respondents both/all

agree otherwise. The president, provost, or health affairs chancellor, if a party, shall have

the option of attending the hearing, and may also designate an appropriate representative,

who shall not be trained in law, and shall not be anyone designated a respondent under

IV.A.3.g., to develop the case before the panel. Neither party may have an attorney

present at the hearing to serve as an advisor. Advisors may be present but may not take an

active part in the hearing nor be someone with a law degree. The presiding officer shall

be responsible for maintaining decorum, assuring that the parties have a reasonable

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opportunity to present relevant oral and documentary evidence, determining the order of

procedure, and making all procedural decisions. The hearing need not be conducted

strictly in accordance with rules of evidence, but the presiding officer may exclude

irrelevant evidence.

c. During the hearing, each party shall have the right, within reasonable limits set by the

hearing panel, to:

(1) Call, examine, and cross-examine witnesses;

(2) Introduce exhibits;

(3) Rebut any evidence. If the complainant has difficulty securing the attendance of

witnesses to testify on the complainant's behalf, the university administration shall

assist by requesting such witnesses to appear.

All evidence, written and oral, shall be recorded by a means furnished by the

university.

d. A panel may hold sessions involving just the panel and the parties, in order to hear

arguments and rulings germane to further hearing sessions.

e. The complainant shall have the right to confront at the hearing all witnesses or other

persons the complainant considers adverse, including those named in IV.A.3.g above, as

subsidiary respondents, except as provided herein. Where unusual and urgent reasons

move the hearing panel to permit the introduction of particular testimony taken outside

of the hearing, the identity of each such outside witness, as well as the statements taken

outside, should be disclosed to the complainant. Subject to these safeguards, statements

may, when necessary, be taken outside of, and reported at, the hearing.

f. In cases involving dismissal for misconduct or neglect of duty or in the case of

termination of an appointment prior to its expiration date, the burden shall be upon the

president or the president's representative to prove by a preponderance of the evidence

the existence of misconduct or neglect of duty justifying dismissal or termination. In all

other cases, the burden shall be on the complainant to prove by a preponderance of the

evidence that the action complained of involved a violation of university policy.

g. The hearing panel, upon request, shall have total access to such university records,

accounts, files, and other sources of information as may be pertinent to the complaint or

respondent's reply. Where considerations of privacy or confidentiality are asserted,

however, the FHC chair or panel, after consultation with university counsel, shall first

review the requested materials to assure that substantial equivalent information is not

available by other means that do not involve considerations of privacy or of

confidentiality.

h. The hearing panel and the parties shall not disclose information of a private or

confidential nature obtained in the course of these proceedings, except as directed in

IV.B.4. below, or where required by law.

4. Findings and Recommendations

a. Except in demonstrated extraordinary circumstances, the hearing panel shall have ninety

days from the time the panel is constituted in which to prepare a report of its findings and

recommendations. The report shall be by majority vote and shall be based on the

ombudsman's report and any evidence presented at the hearing. The report shall include

the panel's findings of fact and its conclusions.

b. The presiding officer shall send notice of the findings and recommendations of the

hearing panel to the parties, the ombudsman, the chair of the FHC, the chair of the

Academic Council, the Vice President for Institutional Equity, and the provost or the

health affairs chancellor as appropriate. If the provost or the health affairs chancellor is

also a respondent, the report shall be sent directly to the president.

c. If due process is found to have been violated in a decision not to renew a term

appointment, grant tenure, or promote in rank, the hearing panel may request that the

decision be reconsidered, along with recommended procedures. The provost or health

affairs chancellor, as appropriate, may request that the FHC modify or amend its request

for reconsideration or recommendation of procedures in instances where effectuation of

the FHC panel decision is seen as imprudent, impractical, or unnecessarily repetitious.

The provost or health affairs chancellor, as appropriate, shall implement the FHC

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recommendation unless he or she determines that it is outside the jurisdiction of the FHC;

that it is not supported by substantial evidence, is clearly erroneous, or violates

fundamental university policy; or that other extraordinary and unusual circumstances

require non-implementation. The provost or health affairs chancellor, as appropriate,

must state in writing the reasons for not implementing the FHC recommendation and

refer the matter to the president. The faculty member and the FHC shall be informed of

the action of the provost or health affairs chancellor and given the opportunity, if they

wish, to present reasons why the FHC recommendations should be accepted.

d. In all cases within its jurisdiction, except those cases enumerated in subparagraph c

immediately above, the FHC may recommend any remedy not inconsistent with

university policy.

5. Appeals

a. Decisions of FHC panels in the further class of cases involving disputed claims by a

faculty member to the existence of tenure, involving academic freedom, involving

dismissal for misconduct or neglect of duty, or involving termination of an appointment

prior to its expiration date are subject to review only by the Executive Committee of the

Board of Trustees pursuant to the request of the complainant or respondent. Any such

request for review must be made in writing and within ten business days after receipt of

the FHC panel decision. If the Executive Committee wishes to consider taking action in

the case, its review shall be based on the record of the hearing and the report of the

ombudsman, accompanied by opportunity for argument, oral or written or both, by the

principals at the hearing or their representatives. The Executive Committee may also

consult with the hearing panel. The Executive Committee may accept, reject, or modify

the findings or recommendations of the FHC.

b. In cases involving allegations of academic due process:

(1) A complainant not satisfied with the findings and recommendations of the FHC may

appeal in writing to the president within ten business days of receipt of the FHC

report, giving reasons why he or she believes that the FHC erred and specifying what

actions he or she believes the FHC should have recommended, except that in cases

also covered by paragraph c. below the time for appeal in the aspect of the case

coming under this paragraph b. shall be the same as for the aspect governed by

paragraph c.

(2) If the provost or health affairs chancellor, as appropriate, does not wish to implement

any or all of the FHC recommendations (for grounds of possible refusal, see

paragraph IV.B.4.c), he or she must state in writing within ten business days of

receipt of the FHC report the reasons why he or she believes that one or more of the

grounds for refusal is applicable and refer the matter to the president.

(3) The appeal statement of a complainant, or the reference of a matter to the president

by the provost or health affairs chancellor, with statement of reasons, shall be made

available to the adverse party and to the FHC at the same time it is sent to the

president. The adverse party and/or the FHC may within ten business days of receipt

of the appeal or reference submit to the president reasons why the FHC's refusal to

recommend relief should be upheld or the FHC's findings and recommendations

accepted. The president shall respond within thirty days thereafter to the appeal or

reference.

(4) A complainant not satisfied by the action of the president may by letter to the

University Secretary request review by the Executive Committee of the Board of

Trustees within ten business days of notice of the president's decision. The Executive

Committee may consider review under the terms and conditions defined in

subparagraph a., immediately above.

c. Decisions of the FHC in cases involving discrimination as defined in section III.A.6

above or harassment as defined in section III.A.7 or section III.A.8 above shall be

submitted to the provost or health affairs chancellor, as appropriate, who shall decide

within ten business days after receipt of the FHC decision whether to accept, reject, or

modify the findings or recommendations of the hearing panel. The decision of the provost

or health affairs chancellor may be appealed to the president by the respondent or

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complainant within ten business days after receipt of the decision. The president shall

make a decision within thirty days of the request for review. The decision of the president

may be reviewed by the Executive Committee of the Board of Trustees pursuant to the

request of the complainant. Any such request for review must be made in writing and

within ten business days after receipt of the decision by the president. The Executive

Committee may consider review under the terms and conditions defined in subparagraph

a., immediately above.

6. Records. A file in the office of the ombudsman shall be maintained for retention of all records

created pursuant to these procedures. The office of the Academic Council shall also seek and

accept records arising from FHC chair and panel activities. Such records shall be kept in both

custodies for at least three years.