

REPORT
OF THE
ad hoc COMMITTEE ON GRIEVANCES

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Background

In his letter of April 25, 1977 to Professor Fred Morrison, Chairman of the University Committee on Tenure, copies of which were sent to three other Senate and University committee chairmen, President Magrath stated his belief that the problem of overlapping jurisdictions between faculty grievance procedures should be resolved. He suggested that a study group be formed to develop proposals to "(1) resolve the jurisdictional problem which has become so troublesome; (2) develop simplified procedures for handling grievance-type situations involving University faculty; (3) develop a grievance mechanism that to the maximum extent possible minimizes the legal advocacy mold that too many grievance procedures seem to be drifting into, and sharply reduce the formality." President Magrath added that he strongly believed in the place and role for legal advocacy and formalities in cases that go before the Senate Judicial Committee and involve such drastic acts as the possible termination of the employment of a tenured faculty member.

Following President Magrath's proposal that the four University committees most primarily involved would designate one individual each to serve and that central administrators who dealt with faculty grievance matters should also serve, nominations for membership were made in late spring of 1977. Vice President Bruning took steps to establish the ad hoc committee in July, 1977. Representing standing committees were Professors Ronald Akehurst, University Committee on Tenure, John Black, University Appeals Committee for Academic Freedom and Responsibility, Eloise Jaeger, Senate Committee on Faculty Affairs, and Clarice Olien, Senate Judicial Committee. Professor Gerhard Weiss who had been appointed Chairman of the University Appeals Committee for Academic Freedom and Responsibility for 1977-78 was asked to

serve on the ad hoc committee because of his considerable experience as Grievance Review Officer of the College of Liberal Arts. University central administrative staff members who joined the committee were Associate Vice President A. J. Linck, Assistant University Attorney Jeffrey Lalla, and Assistant Vice President Shirley Clark, who accepted the role of committee chairperson. Ms. Ann Bailly and Mr. Gary Engstrand served as staff resource persons to the committee, Ms. Bailly throughout the year and Mr. Engstrand through Fall Quarter 1977. Ms. Elizabeth Quam provided secretarial support to the committee.

At the initial organization and orientation meeting called in late July of 1977, it was agreed that the committee would begin to meet more regularly to accomplish its objectives after the Fall Quarter began, since several members had planned late summer vacations and at least two critical faculty members on B term appointments had made other plans for the next several weeks. Accordingly, the ad hoc committee on grievances began a regular series of meetings in late September of 1977. Over the academic year, the committee held nine full meetings, two special meetings: one to which collegiate grievance review officers were invited, and one which was an open forum for interested parties who wished to address the committee on matters within President Magrath's charge. The ad hoc committee divided itself into three topical subcommittees which met frequently between full committee meetings. One subcommittee worked on a statement of jurisdiction and considered problems of communications about grievance procedures within the University community, another subcommittee developed a statement of functions and a set of model procedures for collegiate level academic freedom and responsibility committees, and the third subcommittee formulated a statement of the roles and functions of grievance review officers in the University.

Orientation and Discovery of Issues

Although each committee member brought some specific background or expertise relative to grievance procedures and grievance issues with him or her as the committee began to address its task, the meetings during Fall Quarter essentially were given over to informing ourselves of the numerous grievance procedures available within the University to students, faculty and staff. There is no bulletin, directory or road map which lists all of these procedures: their purposes, jurisdictions, processes and appeal channels. They are disseminated separately in handbooks, brochures, Senate minutes, Regents minutes, memoranda, committee materials and other formats. Some procedures are highly structured and specific whereas others are characterized as being informal and ad hoc. A collection of applicable documents concerning all-University policies and procedures was developed and distributed. It was recognized that additional and widely disparate procedures are available in most collegiate units to deal with student scholastic problems; the committee made no systematic attempt to examine these since this area seemed beyond the purview of the committee's charge. Time and time again we encountered the difficulties in working around the proposed extensive revision of the Regulations Concerning Faculty Tenure which include a provision for establishment of faculty complaints committees at several levels and some changes in the Senate Judicial Committee structure jurisdiction and operations. If (or when) the revised Regulations are implemented, certain current issues of jurisdiction and procedure will be settled. However, until the revised Regulations become reality, ad hoc procedures with their endemic shortcomings will continue to be used for faculty employment complaints. Accordingly, the committee chose not to concentrate attention on faculty employment complaints procedures and the

Senate Judicial Committee since proposed revisions were developed and approved by the Faculty Senate over five years ago and their adoption is pending the resolution of collective bargaining questions.

After preliminary consideration of immediate issues and concerns, the committee decided that it would be useful to provide a forum for expression of views by grievance review officers, grievance committee chairpersons, administrators, representatives of faculty organizations and others. Since no central listing of college/campus grievance review officers or college grievance committee chairpersons exists, provosts and deans were asked to call the prospect of the forum to the attention of the persons in such positions in their units. The forum was also announced at a meeting of the Council of Academic Officers where deans and directors were urged to attend the forum, write or call the committee chairperson concerning their perceptions of the issues involved and their resolution.

In addition to committee members, eight other individuals attended the forum on November 3, 1977, in their roles of GROs, grievance committee chairpersons, and interested parties. Campus representatives from Crookston, Duluth and Morris participated via conference call. The discussion centered on six issues after each participant made a statement to the committee:

- 1) jurisdictional overlap, multiple jurisdiction, vague definitions of what grievance committees should handle which issues
- 2) the role and function of collegiate GROs. the need for information and training of GROs to enhance their effectiveness
- 3) the possibility of opening grievance hearings, who decides whether hearings are open or closed, problems with open or closed hearings
- 4) the need for faculty members to be informed about what criteria

are used for their evaluation and for more information about grievance procedures

5) the growing need for legal assistance by both grievant and respondent, the availability of the University Attorney's Office for advising of grievance committees on procedure, the need to remodel existing grievance procedures to avoid legal entanglements and expenses ("grass-roots procedures" was a phrase used throughout the discussion)

6) the need for development of model procedures to assist colleges in their implementation of the Academic Freedom and Responsibility (AF and R) policy since many feel that they are on their own in being required to develop adequate and fair procedures without the expertise from which to draw assistance as necessary.

In addition to the materials distributed by participants at the forum, five persons representing deans, a GRO and a faculty member highly experienced in tenure matters sent substantive letters to the committee which were discussed initially at the December first meeting and referred to occasionally thereafter for the seminal thoughts which these letters contained. One writer invited consideration of multiple jurisdictions over student conduct matters; since this area was outside our charge as we understood it and fell within a review being conducted by an ad hoc committee working with Vice President Wilderson, we did not discuss that issue at length, although we attempted to keep abreast of the activities of the ad hoc committee of senior Student Affairs staff members and they with us, throughout the next several months.

Upon examination of the substantive letters, a number of concerns became apparent and largely reinforced the configuration of issues which

resulted from the open forum. Writers noted the lack of a clear statement of grievable issues and procedural jurisdictions, the need for an extensive revision or abolition of the April 18, 1974 Senate Statement on Academic Freedom and Responsibility which in the view of one writer may provide for proceedings which, in and of themselves, are dangers to academic freedom and can be used to intimidate faculty members to refrain from expressions of views or evaluations which are not popular. Writers also argued the need for codification of Judicial Committee decisions by the Judicial Committee in order to produce an index of complaints which the Judicial Committee has heard in the past and is willing to hear in the future. Also suggested in the letters were the need for explication of the definition of the responsibilities of the grievance review officers including the University Grievance Review Officer, the need for model procedures for grievance committees, the need to reduce the number of potential appeal levels, the need to simplify as far as possible the quasi-legal nature of procedures and the need to recognize that the complexity and time involved in the use of the procedures sometimes weighs heavily on the grievants and particularly on the respondents who may find themselves entangled in several proceedings for which no legal or para-legal assistance is provided.

One additional effort was made to solicit views of the faculty and other members of the University community regarding the charge to the committee. A notice was published in Brief on December 7, 1977, resulting in three more letters, one of which suggested that the committee clarify the useage of certain terms, another raised procedural questions and the third from the first chairman of the University Appeals Committee on Academic Freedom and Responsibility expressed interest in our task.

As a result of the review of the policy and procedure documents, the

expressed views of participants in the forum and the several letters, committee members decided that they would divide into three subcommittees to study the following issues:

A. Jurisdictional overlap; problems of communication about University grievance procedures. Ann Bailly, Shirley Clark and Clarice Olien agreed to work on this subcommittee.

B. The role and function of the GROs, including the University GRO. John Black, Eloise Jaeger and Al Linck joined this subcommittee.

C. Revision of the function of Academic Freedom and Responsibility grievance committees; development of model procedures. Ronald Akehurst, Jeffrey Lalla and Gerhard Weiss undertook these tasks.

Case Study: The Universe of Academic Freedom and Responsibility Grievances Within One College

Because the brunt of criticism and concern relative to grievance procedures and problems had fallen on the Academic Freedom and Responsibility policy of April 18, 1974, during the committee's exploration of issues, and because no systematically collected data on the number of grievances dealt with under the policy could be found due to the highly decentralized nature of the record-keeping and to the lack of any formal records at all, in many instances, it was agreed that an attempt would be made to collect information pertaining to Academic Freedom and Responsibility grievances since the implementation of the 1974 Senate policy in one of the larger Twin Cities Campus colleges.* The findings were as follows. During that period of time, seven departments of eight reported no filing of formal grievances at all. Within these units there were several grade complaints by students which were brought to the attention of the chairperson and subsequently resolved

* The name of this college is not given to protect the privacy of grievants and respondents.

informally with the parties involved. One department, however, reported that four grievances had been filed and formal departmental hearings were held with subsequent appeals filed by the grievant in at least two of the cases in which the respondent's action was upheld. These complaints concerned alleged failure to provide equal access to placement opportunity, sex discrimination, or sex and age discrimination related to thesis or examination failure. The college GRO reported that during his term of office which spanned the period of time under study, the college-level Academic Freedom and Responsibility Committee did not find it necessary to hear a single case.

The committee found it difficult to draw conclusions valid for the entire University from the experience of this one college.* From the volume of criticism voiced to the committee, we would have expected a greater number of formal hearings. Perhaps some grievances are so extraordinarily consumptive of the time and emotional energies of many persons that their effects extend well beyond single cases. Also, there appears to be so much uncertainty as to what is grievable and how to proceed with a hearing that time may be spent in making decisions and in developing procedures in excess of that which would be typical if policies and procedures were simplified and clarified.

Further Consultations with Collegiate Grievance Review Officers and Others

To advance the understanding of the committee in general and the work of the two subcommittees dealing with jurisdictional questions and with the

* At the January 29, 1977 meeting of the University Appeals Committee for Academic Freedom and Responsibility, Chairperson Marcia Eaton reported on the results of an informal survey taken of GROs in an effort to discover what, if any, problems were being encountered by them. She reported that most officers reported no grievances and hence no problems. By far the greatest number of cases involved grade disputes and several units reported dissatisfaction with settling these through the rather elaborate grievance procedures required by the Senate legislation of 1974.

role of the GRO, additional consultations were scheduled. The subcommittee working on jurisdictional questions met with Professor Fred Amram who chaired the University Appeals Committee on Academic Freedom and Responsibility during the first year of that committee's existence when the statement, later approved by the University Senate on April 18, 1974, was drafted. This meeting was particularly helpful from the standpoint of recalling the context in which the Academic Freedom and Responsibility statement was developed. The context was a University environment deeply affected by the war in Southeast Asia and specifically by the Cambodian crisis. There was some melding of the political upheavals with the academic enterprise: some classes were being cancelled, or course content and format were changed to include political material and discussions. These events and this politicized environment contributed to the shared anticipation that many academic freedom and responsibility grievances might result and some structured means would have to be provided for resolution of them. In response, the University Appeals Committee on Academic Freedom and Responsibility made an effort to find out what responses colleges had made in the implementation of earlier Senate and Regents' policy statements on Academic Freedom and Responsibility, then drafted a description of existing grievance mechanisms (now admittedly somewhat out of date), a rationale for what ought to be and mechanisms for implementation, culminating in the policy and procedural statement which was approved by the Senate on April 18, 1974. Apparently it was not the intention of the early University Appeals Committee on Academic Freedom and Responsibility that students' grade complaints would be heard by Academic Freedom and Responsibility committees unless they clearly involved infringement of academic freedom and responsibility. Nor was it the intention of the drafters that A.F. and R. committees would be

required to hear all grievances presented to them if they deemed consideration to be inappropriate, nor was it intended that A.F. and R. committees would deal with matters affecting faculty status or employment under the Regulations Concerning Faculty Tenure. Professor Amram offered this interpretation along with other observations and opinions on the expectations and intentions of the policy drafters.

On February 9, 1978, four collegiate GROs met with the committee to discuss their perceptions of the GRO's role, kinds of complaints received and responses to them, record keeping, needs for information, education and assistance, problems and suggestions for the committee. At the following regular ad hoc committee meeting on February 16, 1978, another GRO and a college grievance committee chairperson substituting for a GRO discussed similar topics with us. It was evident that little structuring of the role and functions of GROs is provided by the Senate policy of April 18, 1974 which created the positions. Nonetheless, the resourcefulness and helpfulness of the GROs who spoke with us was impressive. Each faculty GRO conceptualized the role somewhat differently, some emphasizing the informal mediator or ombudsman style and others defining their responsibilities as "traffic officer," expeditor, procedural administrator and someone who "helps filter through red tape." The role of GRO seemed to differ according to personal preference and the types of procedures established in the college. While several of the GROs were relatively comfortable with their perceptions of what the role seemed to be, others thought the role was "unclear" and "frustrating." There seemed to be general consensus that provision of information and at least an annual workshop-type meeting definitely would be useful to GROs, especially newly appointed ones. Some concerns about records storage security in faculty offices were raised. At least one GRO felt that many hours had been spent on

dealing with "frivolous" grievances. The experiences and observations of these collegiate GROs formed the basis for the development of a statement of roles and functions of Grievance Review Officers.

Proposal One: Functions of Grievance Review Officers

From the discussions with GROs and other knowledgeable persons and from study of relevant documents, the subcommittee drafted a statement of the functions of GROs which was reviewed and agreed upon by the full committee. The purpose of the statement is to further define and develop the role of the GRO which is included in the Academic Freedom and Responsibility Senate policy of April 18, 1974, but which is treated rather briefly therein. It was the consensus of the committee that the GRO should play an advisory role, not an advocacy role. He or she needs to be well informed regarding procedures and routes for complaints; the recommendations relative to provision of information and training should facilitate the GROs effectiveness. It was also the view of the committee that senior faculty members rather than junior faculty members should be asked to serve as GROs because a junior faculty member could find himself or herself in an intimidating position from time to time. Since it does take time to become familiar with procedures and resources, it is suggested that GROs serve three year terms. From the representation made to the committee by two first year GROs, it was evident that they were most grateful for the assistance extended by the former GROs of their units in learning this important role.

The committee proposes that the all-University Grievance Review Officer be a faculty member appointed by the President after appropriate consultation. This is in keeping with the intent and expressions of the University Appeals Committee on Academic Freedom and Responsibility and the Senate, as we understand it. If demands on that position require it, some secretarial

support and released time from teaching duties may need to be committed to the office.

The proposed statement of functions of GROs follows.

Functions of Grievance Review Officers

1.0 Function

The function of the Grievance Review Officer (GRO) is defined in the Senate Statement on Academic Freedom and Responsibility adopted April 18, 1974. The explicit responsibilities of the GRO include: a) monitoring grievance procedures to protect the rights of grievant and respondent; b) transmitting appeals to the appropriate authority; c) transmitting summaries of grievance procedures to the University Grievance Officer. The sense of the Senate is quite clear that a GRO should be a faculty member rather than an administrator. This point was clarified by the Senate on March 2, 1978. A revision of the 1974 Statement permits "officers of the Graduate School, Continuing Education and Extension and Central Administration" to serve as Grievance Officers since their units consist entirely of personnel with primary administrative assignments.

2.0 The All-University Grievance Officer

The following points about the all-University Grievance Review Officer have emerged from discussions of the ad hoc committee on grievances.

2.1 The all-University Grievance Officer should be a faculty member (position of all-University Grievance Officer illustrated in Figure 1).

2.2 The all-University Grievance Officer should be appointed by the President after consultation with the University Appeals Committee on Academic Freedom and Responsibility and ratified by the University Senate.

2.3 The all-University Grievance Officer should develop and update annually a directory of all GROs and grievance committees by college.

3.0 The Implied Functions of the Unit GRO

3.1 The Senate Statement reads as follows:

"It is hoped that, whenever possible, grievances will be resolved through informal negotiation between the persons involved, possibly with the assistance of other persons within the unit."

3.2 The duties of the unit GRO are so defined as to permit flexibility in order that the job fits the needs of the unit that is served. Consequently, GROs in some units assume active roles as informal mediators. In other units, the GRO serves mainly to direct grieving persons and grievance documents to those persons who assist with the formal procedures. Either modus operandi is consistent with the Senate Statement.

3.3 GROs acting as an informal mediator should of course, do so in good faith, and with the consent of both parties. In any case, the GRO is obliged to provide accurate procedural advice to both parties in a grievance.

3.4 Policies & Procedures of the College. GROs and grievance committee chairpersons should review all matters pertaining to grievance policies and procedures set forth in the constitution or other documents provided by the College.

3.5 The GRO must be able to distinguish appropriate from inappropriate grievances and redirect those deemed inappropriate. By "inappropriate" is meant those grievances which lie outside the jurisdiction of academic freedom and responsibility procedures as defined in the Senate Statement. Where necessary, the GRO should consult with the unit grievance committee on questions of jurisdiction. When a grievance appears to lack substance the GRO may so advise the grievant, but the decision to accept or reject rests with the concerned committee.

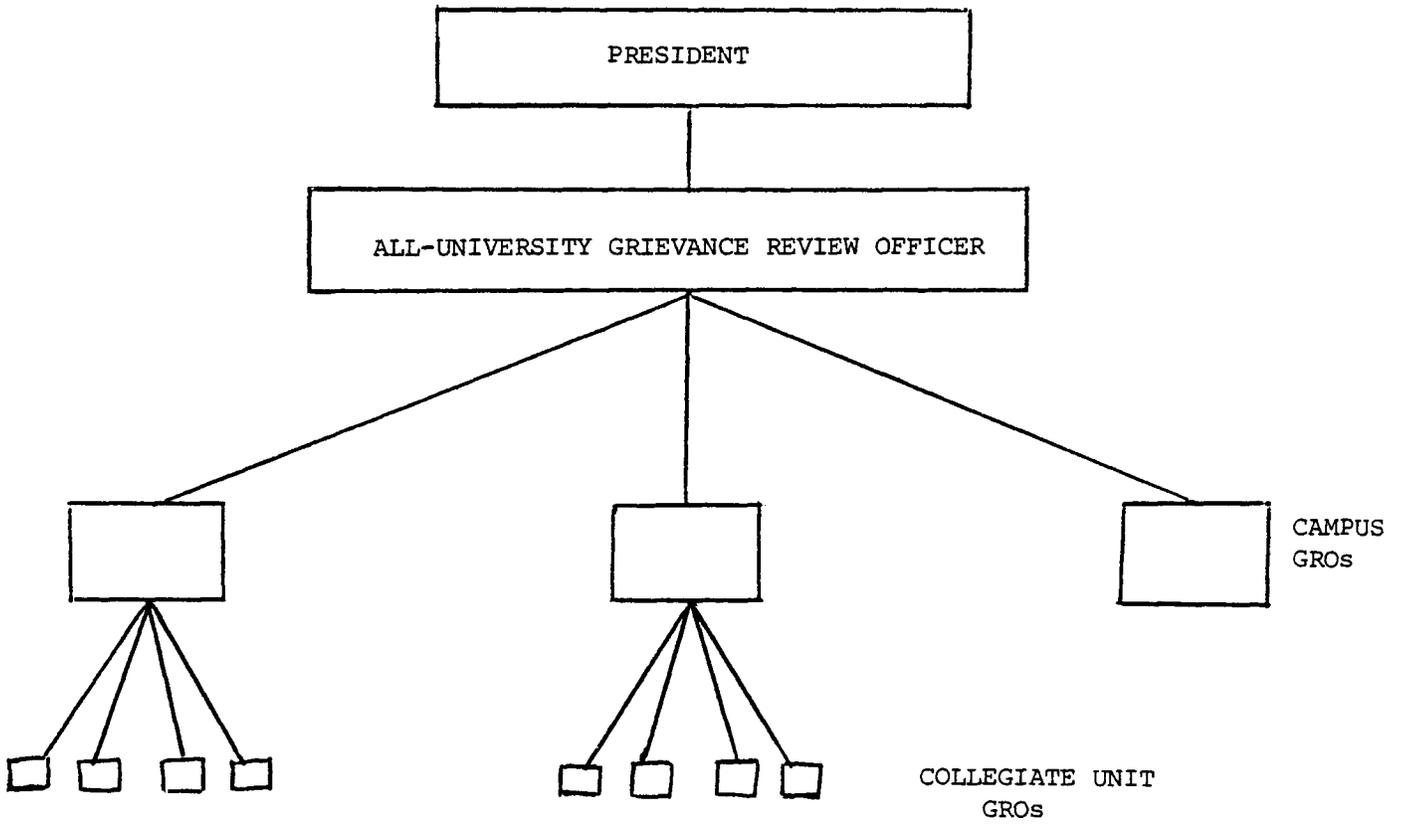
4.0 The Length of Appointment and Training of the GRO

4.1 A term of three years is recommended for all GROs. A three year term provides for continuity. Further, it would be desirable to have a newly-selected GRO serve an apprenticeship during the final months of the predecessor's term.

4.2 It may be useful to have an annual workshop for GROs and grievance committee chairpersons planned and conducted by the all-University GRO in consultation with the Office of Academic Affairs.

NOTE: This statement should be viewed as an initial step in clarifying the GRO's selection, functions, terms of appointment and training and support services. The document should be reviewed periodically with appropriate changes made as needs arise.

FIGURE 1



Proposal Two: Function and Jurisdiction of Academic Freedom and Responsibility Committees

Probably the major impetus to the establishment of the ad hoc committee was the growing concern expressed by faculty members over the proper jurisdictions of Academic Freedom and Responsibility committees which have faculty, student and civil service members. The University Committee on Tenure and other committees had expressed the need to clarify the jurisdictional issue during 1976-77 relative to proceedings against faculty members which could potentially affect their employment or tenure status. Concern was also voiced that unit Academic Freedom and Responsibility committees did not feel free to decide which grievances to hear, due to the rather sweeping jurisdictional statement in the April 18, 1974 policy, and they were having to proceed without sufficient guidance.

As a consequence of our deliberations over the year, it did not seem to us that the April 18, 1974 policy was intended by its drafters or by the Senate to compromise faculty rights under the Regulations Concerning Faculty Tenure in any way. However, while it is easy to express this principle, in fact, some claims of denial of academic freedom or failure to fulfill academic responsibilities do impinge on faculty performance, competence, tenure code rights and the terms and conditions of employment. Therefore, in order to achieve a constraint on Academic Freedom and Responsibility proceedings, we have proposed that if the relief requested by the grievant affects a respondent's employment status, tenure status or student status, the grievance committee may not proceed, and/or if a grievance committee recognizes in the course of a proceeding that evidence suggestive of probable action affecting employment or tenure status has been presented to them, the hearing should be shut down and the record closed.

In the view of our committee, Academic Freedom and Responsibility committees should deal only with academic freedom and responsibility grievances. We concluded that the catch-all aspect of the jurisdiction established in the April 18, 1974 policy under II.E.4. is far too broad and it invites the impression that everything is grievable for it provides for

"other grievances not falling within any other existing grievance system. In view of the broad definition of academic freedom and responsibility discussed earlier, it is appropriate to include within the jurisdiction of these committees any grievances not covered by any other grievance system."

If the ad hoc committee proposal is accepted, section II.E. of the April 18, 1974 Senate policy will need to be revised accordingly. Sections III. and IV. of the Senate policy which deal with grievance committees, implementation procedures, principles of resolution and appeals will also require revision if these proposals are accepted. In fact, the entire policy statement would profit from revisions to incorporate current grievance procedures in the University (Section II) since information concerning some of these is now out-of-date.

The proposals for function and jurisdiction attempt to provide for a reduction in structure at the same time they suggest a narrowing and clarification of grievable matters under the Academic Freedom and Responsibility policy. Committee members felt strongly that grade disputes should not be resolved via the structure which the April 18, 1974 policy provides unless academic freedom and responsibility issues are clearly involved. Some colleges have other structures, student scholastic committees for example, which consider grade complaints whereas others do not. We felt that resolution of grade matters should be managed at the department level and

as informally as possible.

In general, the committee felt that departmental attention to grievances should be informal and that the trappings of an evidentiary hearing should be avoided at that level. Accepting this principle would lead to a reduction of "superstructure," formalism, and legalism which are a heavy and perhaps unnecessary burden on departments. Reduction in formal evidentiary committee levels may also help to control the number of potential appeals. We believe that the rule should be one evidentiary hearing and one appeal, not two or more appeals which can become wasteful of precious faculty, student and staff resources.

Our proposals relative to Academic Freedom and Responsibility committee functions, levels and jurisdictions follow.

The Function and Jurisdiction of Academic Freedom and Responsibility
Grievance Committees

1.0 Functions of the Two Committee Levels

Academic Freedom and Responsibility Grievance Committees exist in order to provide a dispute resolution mechanism for aggrieved faculty, students, and staff who believe that their academic freedom has been violated or that a faculty member, student or staff member has breached his or her academic responsibilities. There are two types of committees, each of which functions differently.

1.1 Committees at levels lower than the collegiate level perform an investigative and mediation function. These committees may proceed in any manner they deem appropriate to the particular grievance. It is hoped that this informal approach will result in an acceptable resolution of the grievance. Procedural due process need not be accorded at this level. If the grievance is not satisfactorily adjusted at this lower level, full

procedural due process should be assured at the collegiate level.

1.2 Collegiate level committees perform an evidentiary hearing function. These committees accomplish their function by considering material evidence bearing upon the allegations contained in the grievant's written complaint and the respondent's written answer^{*} and by making certain determinations based upon the evidence considered. In any collegiate level proceeding the committee may be required to make up to three determinations. It must first determine the truth or falsity of the evidence considered. In making this determination it is guided by the applicable burden of proof. Secondly, if the committee finds some or all of the factual allegations contained in the grievant's complaint to be true, it must render its conclusion concerning whether or not the factual allegations which it found to be true constitute a violation of the grievant's academic freedom or a breach of the respondent's academic responsibilities. Lastly, if the committee determines such a violation or breach occurred, it must make a recommendation to the appropriate office, group or person concerning a remedy to be accorded.

2.0 Jurisdiction

The jurisdiction of Academic Freedom and Responsibility Grievance Committees in the University of Minnesota specifically covers the following: academic freedom and responsibility grievances brought by students, faculty members or staff members against other students, faculty members, staff members, or academic administrators which allege violations of academic freedom or breaches of academic responsibilities under the various statements concerning academic freedom and responsibility approved by the University of Minnesota Senate and the Board of Regents.

* See Rules 2., 3. and 4. of the Model Rules of Procedure which follow.

2.1 Grade disputes, unless they clearly involve a violation of academic freedom and responsibility, must be resolved on the departmental level. In order to be the basis of a complaint for review by a collegiate level Academic Freedom and Responsibility Committee, the student should demonstrate that a violation of his or her academic freedom rights had occurred or that the faculty member had not discharged his or her academic responsibility in the situation.

2.2 In considering whether to accept a complaint for review, grievance committees at the collegiate level may expect the grievant to have cooperated with attempts made by the Grievance Review Officer and/or others to resolve the grievance and to have made reasonable efforts to use informal approaches to achieve acceptable resolution of the grievance.

2.3 The grounds for review by collegiate level committees shall include appropriateness of the complaint, the significance of the complaint, the nature of the relief requested and timeliness. The appropriateness of the complaint refers to the specific action alleged to constitute a violation or breach of a part of the Academic Freedom and Responsibility policy statements. The significance of the complaint refers to the requirement that the complaint be a serious one, that is, the grievant must show that the action of which he or she is complaining is causing substantial and significant prejudice or injury to him or her. Timeliness refers to the requirement that a complaint must be filed within a specified period, or the grievant shall be deemed to have waived any rights he or she otherwise may have under these procedures.

2.4 The nature of the relief requested must be such that the committee can deal with it within its purview. If the relief requested for example, affects a respondent's employment status or student status by way of

suspension, removal or other significant action affecting status, the Academic Freedom and Responsibility Grievance Committee should not proceed with the complaint on that basis. Failure of the grievant to state a claim for which relief may be granted is grounds for not hearing a complaint. Academic Freedom and Responsibility Committees are not bound by the relief requested by the grievant in making their recommendations. Such bodies may determine that some other form(s) of relief, if any, may be more appropriate to resolution of the problem than that proposed by the grievant. Committees should take note that if a hearing panel of an Academic Freedom and Responsibility Committee comes to recognize in the course of a proceeding that evidence suggestive of probable suspension or removal for cause or other significant action affecting the status of the respondent has been presented to them, the hearing should then be terminated, the record closed, and the grievant advised that the complaint may be taken to the appropriate administrator.

Proposal Three: Model Procedures for Collegiate Level Academic Freedom and Responsibility Grievance Committees

In the earliest discussions with GROs and other interested persons, it was suggested that units would find it helpful to have provided to them model Academic Freedom and Responsibility grievance committee procedures which fulfilled the Senate policy principles of fairness, simplicity and accessibility. To this end, a subcommittee informed by Mr. Lalla's expertise developed model rules of procedure which we believe to be legally sound, complete and amenable to implementation by committee members who are without benefit of training in the law. These model rules might be adopted by colleges which are not satisfied with their attempts to develop procedural guidelines or these rules might be held as a standard to which collegiate procedures may be compared. At any rate, it is hoped that these model rules will fill the need expressed by many individuals for assistance in development of good procedures.

Model Rules of Procedure for Collegiate Level Academic Freedom and Responsibility Grievance Committee

Rule 1. Scope and Purpose. These procedures govern all cases heard by the Committee except as they may be modified in accordance with Rule 7. The purpose of these procedures is to provide for the just, fair and expeditious handling of grievances that are within the jurisdiction of the Committee. The term "Committee" means the duly elected, appointed or designated Academic Freedom and Responsibility Grievance Committee of the College of _____ as established in accordance with the Academic Freedom and Responsibility Policy (hereinafter "policy"), which policy consists of:

(a) Resolution on academic freedom approved by the Board of Regents on January 28, 1938;

(b) Statement on freedom and the University issued by the Board of Regents on December 14, 1963;

(c) Statement on academic freedom and responsibility adopted by the University Senate on December 17, 1970, and approved by the Board of Regents on January 8, 1971;

(d) Statement on academic freedom and responsibility adopted by the University Senate on April 18, 1974; and

(e) any future amendments of the foregoing.

Rule 2. Commencement of a Grievance. A grievance proceeding is commenced under these procedures by the grievant filing two copies of his or her written complaint with the Grievance Review Officer of the College of _____. The written complaint must contain, as a minimum, the following information:

(a) The name, address, and telephone number of the grievant and respondent. The term "respondent" means the person who (i) is alleged to have committed an infraction of one's academic freedom (hereinafter "violation") or a breach of responsibility (hereinafter "breach") as established in the policy, or (ii) appears, from a reading of the complaint, to have a substantial interest in the outcome of the grievance and whose actions appear to be challenged as a violation or breach;

(b) A statement in plain and simple language of the specific action, including the date when such action occurred, alleged to constitute a violation or breach;

(c) A verbatim quotation of that part of the policy alleged to be violated or breached by the alleged action;

- (d) The steps previously taken to informally resolve the matter; and
- (e) A statement of the relief requested.

The Committee may not hear the grievance unless the complaint is filed with the Grievance Review Officer within 30 calendar days after the occurrence of the action alleged to constitute a violation or breach.

The Committee may not hear the grievance unless the matter has been previously and finally dealt with by the appropriate departmental level grievance body or unless the Grievance Review Officer of the unit refers the case directly to the Committee.

Rule 3. Mediation. Once the complaint is filed the Grievance Review Officer must send a copy of the complaint to the respondent within three school days after the date of filing. Then the Grievance Review Officer should attempt to informally resolve the grievance by conferring with the grievant, respondent, and such other persons considered relevant to the grievance by the parties and/or the Grievance Review Officer in an attempt to have the grievant and respondent voluntarily settle their differences. If the grievant and respondent do informally settle the grievance (or any part of it) in this way they shall sign an agreement which describes that the grievance (or any part of it) is resolved and the terms or conditions of the resolution.

This agreement shall be a part of the record.

If the grievance is not fully settled informally through mediation within 30 school days^{*} after the date the complaint is filed, the Grievance Review Officer shall so notify the grievant and respondent in writing.

Rule 4. Respondent's Answer. Within 10 school days after receipt of the Grievance Review Officer's letter notifying the respondent that

* A school day is a day of instruction during the regular academic year.

mediation was unsuccessful the respondent shall file two copies of his or her written answer to the complaint with the Grievance Review Officer. The written answer must contain, as a minimum, the following information:

(a) A statement in plain and simple language (i) admitting or denying the factual allegations of the specific action alleged in the complaint, including his or her version of the specific action involved in the grievance, and (ii) setting forth what he or she believes to be the proper interpretation of the applicable part of the policy; and/or

(b) If applicable, the allegation that the Committee lacks jurisdiction to hear the grievance or that the complaint fails to state a violation or breach.

Within three school days after the date the answer is filed, the Grievance Review Officer shall forward copies of the complaint, answer, letter of notification of unsuccessful mediation, and the written agreement resolving part of the grievance (the "grievance file") to the chairperson of the Committee, the grievant and the respondent.

Rule 5. Prehearing Conference. As soon as practicable after receipt of the grievance file from the Grievance Review Officer the chairperson of the Committee must notify, in writing, the grievant and respondent of

(a) the names of the members of the Committee, or panel thereof, which will hear the grievance,

(b) the date, time and place of the prehearing conference, and

(c) the obligation of the grievant and respondent to exchange between them prior to the prehearing conference a written list containing the names of the witnesses and copies of all exhibits each intends to present at the hearing, and

(d) the consequence of failing to fully comply with Rule 5(c).

Failure to fully comply with Rule 5(c) shall be grounds for exclusion of the testimony of such omitted witness or the introduction of such omitted exhibit unless, for good cause shown which is not attributable to the lack of due diligence of the proponent of such omitted witness or exhibit, the Committee elects to hear such testimony or accept said exhibit.

At the prehearing conference the chairperson should: obtain, if possible, an agreement of the grievant and respondent concerning facts, evidentiary foundation for witnesses and exhibits, and the issues remaining (both factual and otherwise) to be determined by the Committee; attempt to have the grievant and respondent settle the grievance without the necessity of a hearing; establish a date, time, and place for the hearing; and consider such other matters that may be necessary or advisable. All of the foregoing should be summarized in a writing by the chairperson. The written summary should be distributed to the grievant and respondent and become a part of the record.

Rule 6. Conduct of the Hearing.

(a) Governing Principles. The hearing shall be conducted in such a manner as will ensure fairness to all parties, proceed expeditiously, and tend to elicit the evidence in the most accurate and reliable form as possible.

(b) Chairperson's Role. The chairperson shall preside at the hearing and shall rule on questions of evidence and procedure, which rulings are appealable to the Committee.

(c) Committee's Role.

(1) The committee shall hear the evidence and based solely thereon shall render its written

- (i) findings of fact,
- (ii) conclusions concerning whether the facts as found constitute a violation or breach, and
- (iii) recommendation for remedial action.

(2) The Committee shall rule, by majority vote, upon appeals made by timely motion of the chairperson's ruling on matters concerning evidence and procedure.

(3) The Committee may question witnesses, may require parties to recall witness previously called, and may require parties to call witnesses or submit evidence not previously called or submitted.

(d) Rights of Parties. All parties shall have the right to

- (1) be represented by an advisor or attorney;
- (2) be afforded a reasonable opportunity to present their case by oral testimony and other evidence;
- (3) present witnesses on their own behalf, call other parties as witnesses, and be witnesses themselves;
- (4) confront and question witnesses called by other parties and otherwise to rebut the evidence produced by other parties;
- (5) present argument.

(e) Written Statements in Lieu of Testimony

Written statements of witnesses who are not present to testify shall be admitted only by written agreement of the grievant and respondent or if there are compelling reasons why the witness is necessary and cannot be available to personally testify.

(f) Rules of Evidence.

(1) Evidence to be Considered. In order to be considered by the Committee all evidence, except that which it admits through notice, must be offered and accepted at the hearing and must be made a part of the record. No other factual information or evidence shall be considered by the Committee.

(2) Notice. The Committee may take notice of facts and University policy which are not offered and accepted as evidence at the hearing if such facts or policy are matters of common knowledge to the University community.

(3) Admissibility. The rules of evidence applicable in courts do not apply to the Committee hearings. The Committee may admit all evidence which possesses probative value, including hearsay, if it is the type of evidence upon which prudent persons are accustomed to rely in the conduct of their serious affairs. Evidence which is irrelevant, immaterial, or repetitious shall be excluded. The term "irrelevant evidence" means evidence which does not tend to prove or disprove the issue to be determined by the Committee. The term "immaterial evidence" means evidence which, while relevant, is nevertheless of no substantial consequence in aiding the Committee to arrive at its determination of the issue. The chairperson shall, upon objection by a party or upon his or her motion, rule upon all questions of admissibility or exclusion of evidence, which ruling is appealable to the Committee in accordance with Rule 6(c) (2).

(4) Burden of Proof. The party offering the evidence in support of his or her position concerning the grievance must prove the claims contained therein by a preponderance of the evidence. The term "preponderance of the evidence" means that all of the evidence by whomever produced which

bears on a particular issue must lead the Committee to believe it is more likely that the claims are true than not true;

(g) Order of Hearing, Presentation of Evidence and Argument. The hearing shall be conducted in substantially the following order:

- (1) Call to order by the chairperson;
- (2) Argument and determination of motions, if any, on jurisdiction or failure to state a violation or breach; In making said determination, the Committee must assume the facts alleged in the complaint are true;
- (3) Opening statement by grievant and respondent;
- (4) Presentation of grievant's case; with respect to each witness, the grievant shall question first, the respondent second, and the Committee last;
- (5) Presentation of respondent's case; with respect to each witness, the respondent shall question first, the grievant second, and the Committee last;
- (6) Closing statements by grievant and respondent;
- (7) Close hearing and go into executive session.

(h) The Record. The chairperson shall maintain a record of the grievance proceeding, which record shall include:

- (1) The complaint and answer;
- (2) Agreement of successful mediation and notification of unsuccessful mediation;
- (3) Prehearing conference summary;
- (4) All exhibits, offered at the hearing;
- (5) A tape recording of the hearing;

- (6) All pre-hearing and post-hearing briefs submitted;
- (7) Written motions made subsequent to hearing or decision;
- (8) The decision of the Committee.

(i) Appeal. Grievant or respondent have the right to appeal the decision of the Committee to the University Appeals Committee on Academic Freedom and Responsibility. The Appeals Committee will not rehear evidence, nor will it decide the merits of a case. It will review the procedures and investigate if the rights of the appellant have been substantially prejudiced because the disposition was a) made without a reasonable basis in the record taken as a whole; b) was made upon procedures which denied a party's right to due process; or c) was in excess of the authority of those making the disposition.

Rule 7. Modification of Rules of Procedure. The procedures set forth herein may be modified when necessity arises and good cause is shown.

Proposal Four: Summary of Grievance Procedures at the University of Minnesota

As many commentators on the environment of higher education have remarked, a new grievance context exists in colleges and universities. This current context seems to be more litigious than previously due to changed economic and social conditions and to the establishment of new forums in which complaints may be heard off campus. At Minnesota, grievance procedures have increased in number significantly in the last several years. However, these procedures have not been collected, summarized into a single statement and disseminated. The need for such information was expressed by GROs, interested persons and ad hoc committee members. Therefore, as a sample of the kind of summary statement which could be prepared to meet this need in the form of a brochure, as a section of a bulletin(s) or simply as handout material to be included in a GRO's notebook of policies and procedures, the subcommittee dealing with jurisdictional issues and communication problems prepared the following material. The content of this material includes proposals made earlier in this report. Due to its tentative and incomplete nature, this summary is not meant to be disseminated as is but rather to serve as an illustration of the kind of statement which should be prepared and disseminated.

SUMMARY OF GRIEVANCE PROCEDURES*

General Provisions

A member of the University community who has a grievance should first attempt informal means of resolution. This would include discussion with the individual against whom the complaint is being made, the department or program head/chairperson, and, if necessary or appropriate, the dean. If satisfactory resolution is not accomplished, a complaint may be filed with a request for a hearing before the appropriate committee.

If the issue involves alleged discrimination on the basis of race, sex, color, religion, age, or handicap, counseling and investigation is provided by the Office of Equal Opportunity and Affirmative Action. Federal and State agencies (e.g., the Office of Civil Rights, the Equal Employment Opportunity Commission, and the State Department of Human Rights,) will accept complaints which (a) have not been submitted to existing internal grievance mechanisms, (b) are simultaneously being heard by internal grievance mechanisms, and (c) have been adjudicated by internal grievance mechanisms.

The University provides administrative review and response to complaints from applicants for employment and from applicants for admission to academic programs.

While other Senate or Assembly committees such as the Senate Consultative Committee, the Senate Committee on Faculty Affairs, and the Senate Committee on Educational Policy are primarily policy-making and review committees, some grievance issues may be brought to their attention, particularly if the implications extend beyond the individual case and issues of potential concern to the academic community are involved.

Questions regarding appropriate channels may be directed to the college, campus or University grievance review officer.

Academic Freedom and Responsibility Grievances: Faculty, Students and/or Civil Service Employees

Complaints that allege a violation of academic freedom or failure to meet academic responsibility are heard by committees established by the Senate Policy on Academic Freedom and Responsibility. Grievances may be brought by faculty, students, and/or civil service employees against academic administrators, faculty, students, or civil service employees. Departmental committees perform an investigative and mediation function and may proceed in any manner they deem appropriate to the particular grievance. If the grievance is not satisfactorily adjusted at the departmental level, an evidentiary hearing may be requested at the collegiate level. Appeal from an adverse decision may be made to the University Appeals Committee on Academic Freedom and Responsibility. These committees do not hear complaints where the remedy sought affects a respondent's employment status or student status by way of suspension, removal or other significant action affecting status. Grade disputes, unless they clearly involve a violation of academic freedom and responsibility must be resolved on the department level.

*This summary is intended for general information purposes only; the respective policy statements on each of these grievance procedures should be consulted relative to specific provisions.

In order to be the basis of a complaint for review by a collegiate level Academic Freedom and Responsibility Committee, the student should demonstrate that a violation of his or her academic freedom rights had occurred or that the faculty member had not discharged his or her academic responsibility in the situation. Copies of the Senate Statement on Academic Freedom and Responsibility (April 18, 1974) and related documents may be obtained from the Office of the Clerk of the Senate.

Faculty Status and/or Employment Grievances

A complaint that involves temporary or permanent removal for cause, nonreappointment, or nonpromotion, must be filed with the chairman of the Senate Judicial Committee within thirty days of the written notice. (Sections 13 and 14 of the Regulations Concerning Faculty Tenure.) A three-member panel is named from the Judicial Committee to serve as the hearing body. The panel submits its findings of fact and recommendations to the President for disposition. Copies of the University Senate Judicial Committee Statement of Procedural Principles and Rules of Procedure and abstracts of previous cases may be obtained from the chairperson of the Judicial Committee.

Grievances that involve other conditions of employment (e.g., salary; the assignment of teaching, research, or public service duties; or the assignment of space or other facilities) may be heard by an ad hoc faculty committee or the dean. The faculty member is accorded fundamental fairness, including the right to be aware of the contents of all documents bearing on the decision, to hear opposing statements, to present evidence on one's own behalf, and to be represented by an academic adviser and/or by counsel. Appeal from an adverse decision may be made to the Senate Judicial Committee.

The University Committee on Tenure, which is responsible for proposing necessary additions and modifications to the Regulations Concerning Faculty Tenure also provides interpretations and opinions thereof.

Student Discipline Grievances

A complaint involving student misconduct, scholastic or non-scholastic, can be processed by reference to the document "A Statement of Standards of Student Conduct Enforceable by University Agencies" approved by the Board of Regents in August 1970 and revised by them in 1975 and 1978. This document sets forth the specific violations actionable by the University (the conduct code) and the procedures appropriate to have those violations adjudicated on the Twin Cities Campus. Copies of "A Statement of Standards..." can be obtained from the University's Conduct Code Coordinator in the Office of the Vice President for Student Affairs.

Scholastic dishonesty is a violation of the conduct code. Each college has authority and jurisdiction over intracollege scholastic dishonesty charges as defined in the conduct code or by the collegiate unit. When a charge of scholastic dishonesty crosses college lines, that is, when the student is not enrolled in the college from which the course or program originates, and the matter cannot be satisfactorily resolved by the instructor, the allegation should be forwarded to the Conduct Code Coordinator.

Besides detailing the role of the Conduct Code Coordinator, who charges

students with violations of the conduct code, "A Statement of Standards..." outlines the role of two major hearing units in its procedures section.

The more informal of the two is the Special Counseling Office, which usually handles those allegations sent to it by the Conduct Code Coordinator that are not particularly serious or complex, and/or that have evidence that is clear, compelling, or not in question. While this office attempts to cooperate within the context of the educational development of the accused student, strict due process guidelines are followed, serious sanctions can be levied and a written record is kept. The more formal hearing body that handles cases beyond the scope of the Special Counseling Office is the Campus Committee on Student Behavior. This committee of the Assembly Committee on Student Affairs has developed detailed formal hearing procedures for cases against both individual students and registered student organizations. Copies of either of these procedure statements can be obtained from the Secretary of the Campus Committee on Student Behavior, who also serves as the Director of the Special Counseling Office.

Other Student Grievances

Complaints involving grade disputes that cannot be resolved by instructor-student discussion and complaints involving a student's academic progress, including nonacceptance to or dismissal from a program can be directed to the Scholastic Standing or Scholastic Progress Committee of the college in question.

The residence hall system within the University's Housing Office has its own behavioral codes and procedures for their adjudication set within the framework of the conduct code Item #7 Departmental Rules. Copies of the residence hall code or questions about the procedures can be directed to individual residence hall directors or the Director of Housing.

Complaints involving alleged violations of Office of Student Financial Aid rules or violations of Recreational Sports rules and regulations can be directed to the appropriate departmental directors for referral to their established grievance committees.

Consultation and help with student discipline or other student grievances is available through the Conduct Code Coordinator and the Student Ombudsman Service. Most of the colleges have student boards which may investigate student problems and make recommendations to the college or department.

Graduate Assistant Grievances*

Grievances arising from assignment of duties, workload, promotion, and termination or suspension before the end of the term which have not been resolved through informal means may be brought for hearing before an ad hoc committee consisting of faculty members and graduate assistants not involved in the grievance. The graduate assistant initiates the procedure by filing a written complaint and request for hearing within 30 days after the occurrence of the alleged grievance. The statement should specify the nature of the complaint and include a description of the informal means employed to resolve the grievance. The complaint should be submitted to the department head (or

*These same procedures may be followed for resolution of similar employment grievances of undergraduate (academic) assistants.

equivalent administrator) and the collegiate grievance review officer. The hearing will ordinarily be held at the departmental level, but a request may be made to the collegiate grievance review officer to hold the hearing at the collegiate level.

The graduate assistant is accorded fundamental fairness, including the right to be aware of the content of all documents bearing on the decision, to hear opposing statements, to present evidence on one's own behalf, and to be represented by a faculty or student adviser and/or by counsel. Appeal from an adverse decision may be made to the dean or the academic vice president. These grievance procedures are described in more detail in the Handbook for Graduate Assistants (if revised) available from departmental offices.

Civil Service Grievances

Student Employees

Under specified conditions relative to the number of work-hours completed, student employees, excepting academic student employees, may file formal grievances under this procedure over any controversy arising out of the interpretation of these policies or any dispute concerning conditions of employment. If the grievance involving a charge of discrimination may be filed regardless of the number of hours worked, these steps are followed in processing a student grievance with resolution attempted at the first possible step:

Step 1: Discussion between the aggrieved student and his/her immediate supervisor.

Step 2: Request to the Student Employment Service for mediation assistance and meeting of the student with his/her department's next level management head.

Step 3: Grievance Review Hearing. Presentation of the grievance through Student Employment Service for a review hearing by the Grievance Review Committee consisting of the Director of Personnel or his designee, the Administrative Vice President or Provost or his designee from the department involved, and a student employee selected by the aggrieved. Decisions by the committee are final and binding upon both parties.

For details, a copy of the Grievance Procedures may be obtained from the Student Employment Service.

Regular Civil Service Employees

Under specified conditions relative to employment status and number of hours worked, civil service employees may charge an alleged improper application of the Civil Service Rules or the Civil Service Classification or Compensation Plan, or alleged improper interpretation of these rules. To be processed through this procedure, a grievance must be submitted at the first step no later than 30 calendar days after the aggrieved condition became known or should

have become known. These four steps are followed in processing a civil service employment grievance:

Step One: Oral Resolution. The aggrieved employee and/or his/her designated representative shall take up the grievance with the appropriate supervisor who shall respond within 5 work days.

Step Two: Formal Resolution. Within 5 work days after receipt of a written grievance, a Personnel Services Representative shall chair a meeting between the parties to the grievance and shall attempt mediation.

Step Three: Grievance Review Hearing. If the aggrieved employee remains dissatisfied with the results of Step Two, he/she or designee shall present the written grievance within 10 work days to a Review Panel composed of the unit Vice President or his/her designee, the Director or his/her designee, and a member of the Grievance Review Board chosen by the aggrieved. Decisions of the Panel are binding upon the University as long as they are in compliance with the Civil Service Rules.

Step Four: Arbitration. Within 10 work days after receipt of the Panel's decision the aggrieved employee or his/her designee may file a request in writing to appeal the Panel's decision to arbitration. The grievance to be appealed to the arbitrator shall be presented by joint written stipulation of the grievant and the University. Procedures for the appointment of an arbitrator and for a hearing are provided. The decision of the arbitrator shall be final and binding on all the parties.

Within the civil service grievance procedure, provision is made also for handling grievances against the Personnel Department.

Copies of the Civil Service Rules may be obtained from the Personnel Department. (Rule 14 is the Grievance Procedure.)

Conclusion

In concluding our work after a year of study, the ad hoc committee felt that some misgivings about our proposals should be shared with President Magrath and the various Senate and University committees to which these proposals may be submitted for review, modification and possible endorsement. Even with the revisions for clarification and simplification which we are recommending, the Academic Freedom and Responsibility system of grievance procedures will remain a rather extensive and elaborate mechanism which is not being used to the extent that must have been envisioned originally when the policy was approved by the Senate. If our proposals regarding delimitation of jurisdiction are accepted, there is likely to be even less use made of, or demand for, these procedures. Thus, a more radical proposal than we were ready to support at this time, but one which deserves consideration, would be to wholly abolish the Academic Freedom and Responsibility procedure, and to deal with such bonafide academic freedom and responsibility grievances as do arise through another established committee process or through an ad hoc committee process and/or through administrative review. We prefer the alternative of determining, within a specified period of time, whether there is sufficient need for the separate Academic Freedom and Responsibility grievance procedure, to justify the election of the committees, the training of committee members and GROs, the development of procedures and the overall commitment of human resources to this activity.

Members of the ad hoc committee are deeply grateful for the thoughtful and provocative contributions to our task furnished by Grievance Review Officers, interested faculty members and academic administrators throughout the University. We invite your opinions and your comments.