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**REPORT OF THE
GRIEVANCE ADVISORY COMMITTEE**

FIVE-YEAR REVIEW

**GRIEVANCE POLICY
UNIVERSITY OF MINNESOTA**

October 25, 1999

INTRODUCTION

On April 16, 1993, the Board of Regents of the University of Minnesota adopted a Grievance Policy for resolution of employment grievances of University employees, including faculty, academic professional and administrative staff, civil service staff and student employees.¹ The policy became effective on September 15, 1993. Section V, Subd. 5, of the Policy established a Grievance Advisory Committee to advise the President of the University regarding the operation of the Policy.² Section V, Subd. 5, also mandated that the Committee “undertake a thorough review of the functioning of this policy every five years and report its findings and recommendations to the president and University Senate.” This is the first five-year report on the operation of the Policy.

SUMMARY OF THE GRIEVANCE POLICY

The Policy is administered by a University Grievance Officer (UGO) appointed by the President after consultation with the Committee. Following submission of a written grievance to the UGO, the Policy has four phases, two informal and two formal. A grievant dissatisfied with the resolution of the grievance at any phase may proceed to the next phase of the process. In Phase I, the UGO conducts a meeting with the grievant and the administrator whose action is being grieved. In Phase II, the UGO meets with the grievant and the supervisor of the person whose action is being grieved. In Phase III, a three-person hearing panel conducts an evidentiary hearing and renders a decision. The hearing panel includes a hearing officer selected by the UGO, a panel member from the University Grievance Board selected by the grievant and a panel member designated by the respondent. If the Senior Vice President for Academic Affairs declines to implement a decision of the hearing panel favorable to the grievant, the grievant may proceed to Phase IV. In Phase IV, the grievance is heard by a neutral arbitrator and panel members selected by the grievant and respondent, respectively. The decision of the arbitration panel is binding.

GRIEVANCE PROCESSING

A major function of the UGO is to counsel individuals who believe that they may have a grievance. Historically, approximately three-quarters of those who consult the UGO decide not to file a grievance. A substantial majority of grievances filed are resolved without any formal hearing. The following chart indicates the volume of grievances filed with the UGO since adoption of the policy and

¹The Policy excludes “employees represented by labor organizations.” §1, Subd. 1. The Policy also excluded employees of the University of Minnesota Hospitals and Clinics, which no longer exist as part of the University. Faculty grievances within the jurisdiction of the University Senate Judicial Committee, arising under the Tenure Code, are also not within the jurisdiction of the Policy. Citations to the Grievance Policy here are to the version of the Policy distributed by the Board of Regents. It is different in format and, in some cases, in language, from the booklet of the Policy distributed by the Grievance Office. The Grievance Office has generally relied upon the version of the policy in its booklet, representing the policy as it was initially adopted, rather than the Regents’ version that was edited and reformatted following adoption.

²The Committee has no role in the disposition of individual grievances. §V, Subd. 5.

the number of grievances in which panel hearings or arbitration hearings were held.

Academic Year	Grievances	Panel Hearings Held*	Arbitration Hearings Held
1993-1994	62	0	0
1994-1995	57	16	0
1995-1996	44	8	2
1996-1997	42	13	2
1997-1998	42	6	1
1998-1999	40	7	0

* "Panel Hearings Held" statistics may include cases pending at Phase III at time of report, as well as hearings held on grievances filed in the prior academic year.

PRIOR REPORTS

Both the University Grievance Officer and the Grievance Advisory Committee have written periodic reports on the operation of the Policy. The Grievance Officer issued reports in May 1994, August 1995, August 1996, August 1997, July 1998, and August 1999. The Committee issued annual reports in July 1995, October 1996, undated annual reports for 1996-97 and 1997-98, and in September 1999. In September 1996, the Subcommittee on Dispute Resolution of the Working Group on Human Resources submitted a report that, in part, reviewed the operation of the Grievance Policy.³

REVIEW PROCESS

In preparation for this Report, the Committee reviewed the reports of the Grievance Officer (that included annual statistical reports), the reports of the Committee (that included an opinion survey of participants in the grievance process in 1996-97 and 1997-98), the Committee's own opinion survey conducted for 1998-99 and the Report of the Subcommittee on Dispute Resolution. In addition, the Committee invited members of the University community to communicate observations regarding the

³The Subcommittee concluded that the Policy was "operating well." It made four recommendations: (1) designate provosts and chancellors as the senior officers responsible for reviewing Phase III recommendations; (2) clarify sections of the policy (unspecified) that have been unclear to some participants; (3) emphasize the counseling role of the UGO; and (4) permit sexual harassment complainants the option of pursuing claims through the UGO or the Office of Equal Opportunity.

operation of the Policy and recommendations for improvements.⁴ The Grievance Office also prepared for the Committee a list of grievances that had suggested possible ambiguities in the definition of the Policy's jurisdiction.

FINDINGS

The Grievance Policy is fulfilling its objective of providing an "internal University process for the good faith review and resolution of employment grievances."⁵ University employees, in a variety of employment classifications, have used the Policy. Opinion surveys over the years suggest that both grievants and respondents are generally satisfied with the operation of the Policy and the performance of the UGO. The process is viewed as accessible and fair. There is no basis to suggest any fundamental changes in the operation of the Policy. This review has, however, identified a number of instances in which changes in the language of the Policy could enhance clarity of the Policy and the efficiency of its operation.

RECOMMENDATIONS

The attached copy of the Grievance Policy⁶ indicates proposed amendments. The following is an explanation of those proposed amendments that are substantive in nature.

1. The jurisdiction of the Grievance Policy is expanded in Section II, Subd. 1, to include emeritus professors. An arbitration case arising under the Grievance Policy held that the term "employees" in the policy did not include emeritus professors. The Committee believes that the relationship between the University and emeritus professors is an important one and that the Grievance Policy should respect emeritus professors' concerns arising from that relationship.

2. Throughout the policy, the identity of the senior Respondent's representative has been changed to "senior administrator" to keep the policy current despite changes in University administrative titles.

3. In Section III, Subd. 4, the prior exclusion of sexual harassment grievances has been deleted. This amendment is recommended by the Grievance Officer, the Office of the General Counsel and the Office of Equal Opportunity and Affirmative Action. This change was also recommended by the 1996 report of the Subcommittee on Dispute Resolution of the Working Group on Human

⁴Requests for comments were sent personally to all Student Senators, persons who had served as Grievance Hearing Officers or Panel Members, Chancellors, Vice Presidents, Deans, Directors, Department Heads and Chairs, as well as to the Senate Committee on Faculty Affairs, the Academic Staff Advisory Committee and the Civil Service Committee. An general invitation for comments appeared in the University of Minnesota *Brief* of February 17, 1999. Twenty responses were received.

⁵Grievance Policy, § I, Subd. 1.

⁶The proposed changes are indicated on the version of the Policy distributed by the Board of Regents.

Resources. Under the proposed policy the grievant raising any claim of discrimination, including sexual harassment, would have the option of bringing the claim under the Grievance Policy or to the Office of Equal Opportunity and Affirmative Action. Experience has shown that some kinds of sexual harassment issues would be better handled under the Grievance Policy, such as cases in which a claim of sexual harassment is a minor part of a larger grievance. All of those involved in administration of the policy believe that the grievant should be able, in all cases, to select the appropriate forum for pursuit of a discrimination claim.

4. In Section V, Subd. 3, and Section V., Subd. 4, the authority to appoint faculty members to the University Grievance Board and Hearing Officers' Panel has been moved from the Senate Committee on Faculty Affairs to the Faculty Senate Committee on Committees. The Senate Committee on Faculty Affairs historically has had difficulty carrying out this appointment function and the Committee on Committees, with its data base of faculty experience and interest, is better suited to this task.

5. Language has been added to a new Section VI, Subd. 4, and to the existing Section IX, Subd. 1, to codify the existing practice for the handling of jurisdictional disputes.

6. Specific language has been added to Section IX, Subd. 2, and Section X, Subd. 2, to make clear that all members of Phase III and Phase IV panels, despite the source of their appointment, are to serve as neutrals. The specific references to the neutrality of the arbitrator in Section X, Subd. 3, have been deleted to make sure that no distinction is drawn between the arbitrator and other panelists with regard to neutrality.

7. The time limit for the parties to select persons to serve on the Phase III Hearing Panel and the Phase IV Arbitration Panel has been changed from five work days to ten work days. The five work day limit has proved to be unworkably brief.

8. In Section XI, Subd. 6, the term "attorney" has been defined as "a person licensed to practice law in any jurisdiction." The amendment is designed to clarify an issue that arose under the current policy of whether a person with a legal education, but not licensed to practice law, was an "attorney" under the policy.

As Approved by the Grievance Advisory Committee, October 25, 1999

Proposed Amendments
to the
Grievance Procedure

Note: Proposed additions are in italics. Lining though indicates text proposed for deletion. Changes in capitalization are not noted.

Section I. Purpose.

Subd. 1. Application.

The University of Minnesota Grievance Policy ("UGP") is an internal University process for the good faith review and resolution of employment grievances filed by employees of the University, including faculty, academic professional and administrative staff, civil service staff and student employees, *as well as grievances of emeritus faculty members*. This policy does not cover employees of the ~~University of Minnesota Hospital and Clinic ("UMHC"), and employees~~ in bargaining units represented by labor organizations.

Subd. 2. Intention.

The UGP does not, and is not intended to, create any legal rights for faculty members, students, staff, or other persons, and is not part of any contract between the University and its employees or any other individual. The substantive rights of employees, to the extent they exist and may be grieved, are established in other University rules, regulations, policies, and practices. However, the UGP may itself be the subject of a grievance. Nothing in the UGP is intended to limit the University's right to manage and direct its workforce and operations, including the University's right to adopt or alter any rule, regulation, policy or practice. An employee who chooses to proceed to Phase IV arbitration shall be required to sign a waiver which, at that point, shall create contractual obligations between the University and the employee. The Phase IV arbitration award is the only feature of this policy which is legally final and binding on both the University and the employee.

The intent of the UGP is to create an internal method for addressing grievances, and the policy is subject to change from time to time.

Section II. Scope of Grievance Policy.

Subd. 1. Definition of Parties.

A grievance may be filed by one or more faculty, academic professional and administrative, civil service or nonacademic or academic student employees, except employees represented by a labor organization. ~~and UMHC employees.~~ *A grievance may also be filed by a person formerly a member of the faculty currently having emeritus status.* The person filing the grievance is the grievant.

The respondent is the University of Minnesota. The respondent's representative at each phase of the

process is identified in this policy. *The policy identifies the respondent's representative in some phases of the policy as the "senior administrator" who shall be the vice president, provost, or chancellor (or the President or his/her designee, if the unit reports directly to the President) for the unit in which the grievant is employed.*

A grievance may not be directed against another employee as an individual.

Subd. 2. ~~Violation of Policy~~: Subject Matter of Grievances.

An employee's a grievance must allege a violation of a specific University rule, regulation, policy or practice pertaining to the employment relationship between the grievant and the University. This includes the terms of the grievant's employment contract, alleged violations of this grievance policy, and discipline. The grievance of an emeritus faculty member must allege a violation of a specific University rule, regulation, policy or practice relating to that status.

Section III. Actions Not Covered.

Subd. 1. Discretionary Actions.

Discretionary actions, such as salary adjustments and performance evaluations, may not be grieved, except to determine

- (1) whether the discretionary action was made in accordance with relevant University rules, regulations, policies, practices, procedures, or criteria; and
- (2) whether the action constitutes a clear abuse of discretion.

Subd. 2. Tenure Related Claims.

Complaints involving promotion, denial of tenure, suspension or removal of a regular faculty member, or allegations of denial of academic freedom relating to teaching and research are not grievances under this policy.

Such claims are governed by procedures contained in the Board of Regents policy, "Faculty Tenure."

Subd. 3. Non-employment Related Student Claims.

Student claims not relating to the employment relationship, including but not limited to admission decisions, academic standing, grades, and cheating, are not grievable under this policy. Such claims are governed by procedures provided by the appropriate college, campus, or academic division *or the Student Academic Grievance Policy.*

Subd. 4. ~~Sexual Harassment and Academic Misconduct~~ Claims.

Complaints alleging ~~sexual harassment and~~ academic misconduct are not grievances under this policy. Such claims shall be referred to the appropriate office for investigation and review. Discipline imposed on any employee, except employees represented by a labor organization, ~~or UMHC~~

employees, including discipline imposed as a result of ~~sexual harassment and~~ academic misconduct proceedings, *may be grieved* ~~is a grievance~~ under this policy.

Section IV. Discrimination Claims.

Subd. 1. Filing Office.

Any complaint alleging discrimination in the employment relationship, ~~other than including~~ sexual harassment, may be filed either under this policy or with the Office of Equal Opportunity and Affirmative Action (~~“office”~~ “OEO/AA”), but not both. If the complaint is filed with ~~the office~~ OEO/AA, the complaining party will not be entitled to any review under this policy. ~~Respondents~~ Persons who are disciplined as a result of employment related discrimination complaints, ~~initially filed with the office including sexual harassment complaints,~~ may subsequently grieve the discipline under this policy.

The director of ~~the office~~ OEO/AA shall appoint a representative to serve as an ex-officio, nonvoting advisor to a Phase III panel hearing any complaint alleging discrimination which has not been investigated and reviewed by ~~the office~~ OEO/AA.

Section V. Administration.

Subd. 1. University Grievance Officer.

The university grievance officer ("UGO"), and any necessary additional staff, shall be appointed by the president after consultation with the Grievance Advisory Committee. The UGO will:

- (1) review each complaint to make an advisory determination whether the complaining party is covered by this policy, and whether the complaint is a grievance within the scope of the UGP. The UGO may provide counseling to complainants regarding appropriate procedures, and shall direct all complainants and complaints which are not "grievances" under this UGP to the correct forum;
- (2) forward all disputes regarding the appropriate University representative to the ~~senior vice president for academic affairs~~ *Executive Vice President and Provost* for a final disposition;
- (3) administer the UGP process, including scheduling all meetings, receiving and forwarding all documents, and chairing the Phases I and II, as necessary, meetings;
- (4) mediate as requested by the parties; and
- (5) prepare an annual report to include a summary of issues grieved and the decisions, which shall be published in the University Senate docket, and which shall be delivered to the Office of the Board of Regents, the President, Grievance Advisory Committee, Faculty Consultative Committee, Academic Staff Advisory Committee, Civil Service Committee, and Student Consultative Committee. The report must include a summary (prepared to protect the identity of individual grievants) of those instances in which the ~~senior vice president for academic affairs~~ *administrator* has declined to accept the recommendations of a Phase III hearing panel.

~~Subd. 2. Senior Vice President for Academic Affairs. Determination of Respondent's Representative.~~

The ~~senior vice president for academic affairs~~ *Executive Vice President and Provost* shall have the final authority to determine the ~~appropriate senior administrator or University representative.~~ *appropriate respondent's representative.* The ~~senior vice president for academic affairs~~ will also designate the appropriate vice presidential areas and the responsible vice presidents (or equivalent officers, such as chancellors or vice-provosts). These decisions may not be contested in proceedings under the UGP.

Subd. 3. University Grievance Board.

The University Grievance Board is a board of peer representatives able to serve on Phase III hearing panels. It shall consist of at least five University employees from each of the following categories: faculty, academic professional and administrative staff, civil service staff, nonacademic student employees, and academic student employees. Faculty representatives shall be appointed by the *Faculty Senate Committee on Faculty Affairs Committees*, academic professional and administrative representatives by the Academic Staff Advisory Committee, civil service representatives by the Civil Service Committee, nonacademic and academic student employee representatives by the Student Senate Committee on Committees. The appointees in each category should be from broadly varied backgrounds, and should receive staggered two-year terms.

Subd. 4. Hearing Officers' Panel.

The Hearing Officers' Panel is a separate group of employees designated and trained to serve as hearing officers. The Hearing Officers' Panel shall consist of five University employees from each of the following categories: faculty, academic professional and administrative staff, and civil service staff. The *Faculty Senate Committee on Faculty Affairs Committees*, Academic Staff Advisory Committee and Civil Service Committee shall each prepare a list of ten University employees from the respective categories. The President may ask for more names from the committee. The President shall appoint from each list five employees to serve on the Hearing Officers' Panel for staggered three year terms. The UGO or an appropriate designee shall train all hearing officers for service as Phase III presiding officers.

Subd. 5. Grievance Advisory Committee.

The Grievance Advisory Committee will consist of one member appointed by each of the following groups: The Senate Committee on Faculty Affairs, the Academic Staff Advisory Committee, the Civil Service Committee, the Student Senate Committee on Committees, a chair appointed by the Senate Consultative Committee, and two administrative representatives appointed by the President. Appointments may be for terms of up to two years.

The Grievance Advisory Committee will advise the President regarding the selection of the UGO, the UGO's performance, and the operation of the UGP. The committee has no role in the disposition of individual grievances.

The Grievance Advisory Committee will undertake a thorough review of the functioning of this policy every five years and report its findings and recommendations to the President and University Senate. ~~The first review shall commence on September 16, 1998.~~

Section VI. Initiating a Grievance.

Subd. 1. Filing a Grievance.

A grievance is initiated by filing a written statement of the grievance with the office of the UGO within 30 work days after (1) the action being grieved occurred or commenced; or (2) the grievant received notice or had knowledge of the action being grieved, whichever is later.

An alleged grievance will not be acted upon unless filed within the specified time, unless there are compelling reasons for delay.

Subd. 2. Contents.

The written grievance must identify:

- (1) the person *or persons* grieving and the employment status;
- (2) the action being grieved;
- (3) the specific University rule, regulation, policy, or practice pertaining to employment, or provision of grievant's employment contract, alleged to have been violated (*or in the case of an emeritus professor, a rule, regulation, policy or practice related to that status*);
- (4) the person *or persons* responsible for the action, if known, and the unit; and
- (5) a proposed remedy which is within the authority of the University to grant.

Subd. 3. Copy to Respondent.

The UGO shall forward a copy of the grievance to the person *or persons* responsible for the action if identified, and if not, to the unit administrator, within five work days after the grievance is filed.

Subd. 4. Jurisdictional Issues.

The UGO shall make an advisory determination whether the complaining party is covered by this policy, and whether the complaint is a grievance within the scope of the UGP. Any party disagreeing with the advisory jurisdictional determination of the UGO may seek review of the UGO's determination by a Phase III hearing panel. To do so, the party shall notify the UGO in writing within ten work days of the party's notice of the UGO's decision.

Section VII. Phase I - Informal Meeting *Between Parties*.

Subd. 1. Purpose.

The purpose of the Phase I meeting is to facilitate grievance resolution through informal discussion and negotiation between the parties. The parties in this phase are the grievant and the *Phase I University representative, who is usually the person administrator* responsible for the action which is grieved.

Subd. 2. Timing.

The UGO shall set an informal meeting with the grievant, the *Phase I University representative*, respondent and the UGO within ten work days from the date the grievance was filed, unless there are compelling reasons for delay.

Subd. 3. Role of UGO.

The UGO shall chair this meeting and explain the grievance process including relevant time limitations. The UGO should facilitate communication of information between the parties, and may make settlement recommendations as appropriate. Such recommendations shall be made solely to assist the parties in reaching a speedy and fair resolution.

Subd. 4. Continuation of Phase I Meetings.

By express mutual consent of the parties, the Phase I meetings may be continued for a specified period of time to enable the parties to consider a proposed resolution. Absent express mutual consent, the Phase I meeting shall be deemed to conclude when the parties leave the meeting.

Subd. 5. Conclusion of Phase I Meetings.

Within five work days of the conclusion of the Phase I meeting, the Phase I University representative shall submit a written answer to the grievance to the UGO and the grievant. If the grievant chooses to proceed to Phase II, the grievant must submit a written notice of intent to proceed to the UGO and the respondent within five work days after the date the grievant received the Phase I written answer, unless there are compelling reasons for delay.

Section VIII. Phase II - Informal Meeting with Supervisor Administrator.

Subd. 1. Purpose.

The purpose of the Phase II meeting is to facilitate grievance resolution by informing and involving higher University administration. The parties are the grievant and the supervisor of the Phase I University representative or a designee.

Subd. 2. Timing.

The UGO shall set a meeting within ten work days from the date of the UGO's receipt of the grievant's notice of intent to proceed, unless there are compelling reasons for delay.

Subd. 3. Attendance.

The meeting shall be attended by the grievant and ~~an appropriate supervisor~~ of the Phase II University representative. The Phase I University representative may appear at the request of the ~~supervisor~~ Phase II University representative. The ~~vice president senior administrator~~ for the unit in which the grievant is employed shall be notified by the UGO of the Phase II meeting, and has the authority to designate the appropriate ~~supervisor~~ *University representative* to attend this meeting.

Subd. 4. Role of UGO.

The UGO shall chair the meeting and explain the grievance process including relevant time limitations. If all parties agree, the UGO may continue to serve as a mediator in a settlement facilitating role.

Subd. 5. Continuation of Phase II Meetings.

The Phase II meetings may be continued for a specified period of time to enable the parties to consider a proposed resolution by express mutual consent of the parties. Absent express mutual consent, the Phase II meeting shall be deemed to conclude when the parties leave the meeting.

Subd. 6. Conclusion of Phase II Meetings.

Within ten work days after the Phase II meeting concludes, the Phase II University representative must submit a supplemental written response to the grievance to the UGO and the grievant. Any jurisdictional challenges must be included in the supplemental response, if not already raised in the initial response.

Subd. 7. Notice of Intent to Proceed.

If the grievant is not satisfied with the supplemental response, the grievant must deliver a written notice of intent to proceed to Phase III to the UGO and the Phase II University representative within ten work days after receipt of the Phase II supplemental response, unless there are compelling reasons for delay. The grievant may amend the grievance by delivering a written amendment with the notice of intent to proceed.

Subd. 8. Amending the Grievance.

If the grievant amends the grievance, the Phases I or II *University* representative may file a written response to any new issues within ten days of receipt of the amended grievance.

Section IX. Phase III - Panel Hearing.

Subd. 1. Purpose.

The purpose of Phase III is to provide an internal evidentiary hearing by a three person panel *regarding the substance of a grievance or an advisory jurisdictional determination of the UGO*. The parties are the grievant and the ~~vice president~~ *senior administrator* for the unit. ~~(or the president if the unit reports directly to the president)~~ The ~~vice president~~ *senior administrator* ~~(or, if applicable, the president)~~ may designate a representative to act on behalf of the University.

Subd. 2. Panel Members.

The UGO shall convene the Phase III hearing panel. *All members of the panel shall serve as neutrals.* The panel shall consist of one member of the University Grievance Board chosen by the grievant, one

designee of the *senior administrator* ~~vice-president~~ of the unit in which the grievant is employed (or by the president, if the unit reports directly to the president), and one hearing officer from the Hearing Officers' Panel. The UGO shall select a hearing officer of the same employee category (faculty, academic professional and administrative, or civil service) as the grievant. If the grievant is a student employee, the hearing officer shall be from the faculty, academic professional and administrative or civil service employee categories as determined by the student grievant. No panelist shall have a direct interest in the grievance.

The grievant and the ~~vice-president's designee~~ *senior administrator* shall inform the UGO of their selections within ~~five~~ *ten* work days after ~~delivery~~ *notification* of the intent to proceed to Phase III. The UGO shall promptly convey the names of the three panel members to all parties.

Subd. 3. Peremptory Challenge.

The grievant and the University representative each have the right to peremptorily challenge the person selected as hearing officer by the UGO within five work days of receipt of notice of the selection. The UGO will then select another hearing officer from the Hearing Officers' Panel. There is no further right to peremptory challenges.

Subd. 4. Timing.

The UGO shall schedule the Phase III hearing within 30 work days from the date of the UGO's receipt of the grievant's notice of intent to proceed, unless there are compelling reasons for delay.

Subd. 5. Panel Decision.

The hearing officer will direct the course of the Phase III hearing. After the Phase III hearing, the panel shall prepare a decision consisting of a statement of the issues, contentions of the parties, findings of fact, opinion and award, if any. A majority of the panelists is required to reach a decision. The decision shall be issued within 30 work days of the close of the record, and shall be signed by the panel members concurring in it. The decision shall be sent to the UGO, who shall promptly distribute it to the parties and to the ~~senior vice president for academic affairs~~ *appropriate senior administrator*.

Subd. 6. Response to ~~Decision Favorable to Grievant~~ of Senior Administrator to Panel Decision.

If the Phase III panel decision is favorable to the grievant, the University will implement it, unless the senior ~~vice president for academic affairs~~ *administrator* delivers a written notice to the UGO and the grievant within ten work days of the receipt of the Phase III panel's decision stating that the decision is not acceptable and the reasons why it is not acceptable. ~~In this event, the grievant may request Phase IV arbitration.~~

Subd. 7. ~~Response to Decision Not Favorable to Grievant~~. Request for Arbitration.

If the grievant is dissatisfied with the decision of the Phase III panel or the response of the senior administrator, if the decision of the Phase III panel is not favorable to the grievant, the grievant may

choose to proceed to Phase IV arbitration. *To do so, the grievant must deliver a written notice of intent to proceed to Phase IV to the UGO and the Phase III University representative within ten work days of notice of the senior administrator's decision, If the Phase III decision is not acceptable to the University, or if it is not favorable to the grievant, the grievant must deliver a written notice of intent to proceed to Phase IV to the UGO and the Phase III University representative within ten work days after the grievant received the Phase III hearing panel decision or the senior vice president's administrator's notice, whichever occurred last, unless there are compelling reasons for delay.*

Subd. 8. Agreement of Binding Arbitration.

If the grievant chooses to proceed to arbitration, the grievant shall sign an acknowledgment of the voluntary choice to proceed to binding arbitration to resolve the grievance and/or discovery dispute, and shall waive and release all rights to pursue substantially the same claim in any other forum.

Section X. Phase IV - Arbitration.

Subd. 1. Purpose.

The purpose of Phase IV is to provide an opportunity for the parties to voluntarily engage in final and binding arbitration of a discovery dispute by *an neutral* arbitrator and of the grievance by a three person panel. The representative parties are the grievant and the President or a designee.

Subd. 2. Panel Members.

The UGO shall convene the arbitration panel. *All members of the panel shall serve as neutrals.* The panel shall be chaired by *an neutral* arbitrator who shall direct the course of the Phase IV hearing. The UGO shall obtain a list of five arbitrators from the state of Minnesota Bureau of Mediation Services. In cases involving faculty or academic professional and administrative staff, the Bureau shall randomly select the names from a roster of no fewer than 25 non-Minnesota resident members of the National Academy of Arbitrators holding either tenured faculty rank or emeritus status in a university located in the United States, other than the state of Minnesota. In cases involving civil service or student employees, the Bureau shall randomly select the names from its own roster of grievance arbitrators. Within ten work days of receiving the list, the grievant and University representative shall alternate in striking names from the list until a single arbitrator's name remains. The party to strike first shall be determined by the toss of a coin.

In addition to the arbitrator, the panel shall consist of a University Grievance Board member selected by the grievant, and a designee of the ~~vice president~~ *senior administrator* of the unit in which the grievant is employed. These panelists may, but need not, be; the same persons who served on the Phase III panel. The parties shall inform the UGO of their panel member selections within ~~five~~ *ten* work days of receipt of the list of arbitrators.

The UGO shall notify the panel members of their selection, and shall coordinate scheduling of the arbitration hearing.

Subd. 3. Role of the Neutral Arbitrator.

The neutral arbitrator shall conduct all preliminary hearings required to reach final decisions in discovery disputes over access to documents and information.

Subd. 4. Panel Decision.

The panel shall issue a decision within 30 work days from the date of the close of the record. A decision shall be made by a majority of the panelists. The decision shall be in writing, and shall include a statement of the issues, contentions of the parties, findings of facts, and opinion and award, if any. The decision shall be sent to the UGO, who shall distribute it to the parties promptly. The decision is legally binding.

Subd. 5. Expenses.

The grievant and the University shall each be responsible for one-half of the arbitrator's fees and expenses. There will be no charge for participation by the other representatives on the Phase IV panel. The parties shall be responsible for their own expenses.

Section XI. General Rules.

Subd. 1. Time Limits.

A work day is defined for purposes of this policy as a day the University is open, but does not include weekends and holidays. Compelling reasons for delay include days on which the employee was not on the payroll of the University, or was on authorized vacation or leave, except for determining the initial filing deadline.

When the grievant fails to file or process a grievance within the time limits set forth above, unless there are compelling reasons for the delay, the grievance shall be deemed to have been waived. At each phase in the grievance procedure the parties may agree to waive the time limits, or to skip any phase, by express mutual consent.

The University representative's failure to produce the requisite written responses following the close of Phases I, II, and III sessions shall not limit the grievant's rights to appeal to the next relevant phase of the process.

Subd. 2. Due Process.

All parties have the right to be present throughout all Phases III and IV proceedings, to submit evidence, and to cross-examine adverse witnesses. The rules of evidence used in courts of law shall not apply. In cases not involving the imposition of discipline, the grievant has the burden of demonstrating the violation of University rule, regulation, policy, or practice. In cases in which discipline has been imposed, the respondent has the burden of demonstrating the violation of University rule, regulation, policy, or practice and the appropriateness of the sanction.

Subd. 3. Duty to Provide Discovery.

Parties shall comply with all reasonable requests for information relevant to the grievance, provided such disclosure is consistent with law. Hearing officers and ~~neutral~~ arbitrators have no authority to require disclosure of information which is inconsistent with any law, particularly the Minnesota Government Data Practices Act and the Federal Educational Rights and Privacy Act. In order to comply with confidentiality obligations of the University, a party and panel members may be required by the University, at its sole discretion, to sign and abide by a confidentiality agreement before certain information may be released for the limited purpose of a grievance hearing.

Subd. 4. Discovery Contests at Phase III.

If the parties cannot resolve a dispute over access to documents or information, the UGO shall refer the matter to the hearing officer for a preliminary hearing for the limited purpose of resolving the discovery dispute. The hearing officer may confer with the UGO regarding guidelines for access to documents or information. The hearing officer shall issue a decision within five work days after the close of the record, and deliver copies of the discovery decision to the UGO and to the parties.

(a) If the hearing officer's discovery decision is not challenged within five work days after its receipt, the UGO shall promptly schedule a Phase III hearing.

(b) If either the University representative or the grievant objects to the hearing officer's discovery decision, the objecting party must deliver written notice to the UGO and to the opposite party within five work days after receipt of the hearing officer's discovery decision. In either case, since arbitration is voluntary under this policy, within five work days following the five work days challenge period, the grievant shall unilaterally determine, through written notice delivered to the UGO and the University representative, the avenue to be followed to resolve the discovery dispute. The grievant's choices are as follows.

(1) The discovery issue may be decided through legally binding arbitration as set forth in Phase IV of this policy except that the ~~neutral~~ arbitrator shall hear and decide discovery issues without a Phase IV panel. The ~~neutral~~ arbitrator shall issue a decision within ten work days after the close of the record. Under this avenue, the UGO shall schedule the Phase III hearing within 30 work days from the date of the UGO's receipt of the ~~neutral~~ arbitrator's discovery decision.

(2) The grievance issue may proceed to a Phase III panel hearing on its merits. However, the decision to proceed to a Phase III panel hearing shall not be construed as a waiver of the grievant's right to subsequently appeal to Phase IV the hearing officer's discovery decision and the Phase III panel's decision on the grievance. Under this avenue, the UGO shall promptly schedule a Phase III hearing.

Subd. 5. Subpoenas.

At the request of either party, the arbitrator may issue necessary subpoenas as provided by law.

Subd. 6. Advocates.

Grievants may be represented by employee advocates throughout the process. If the grievant wishes to be represented by an attorney (*a person licensed to practice law in any jurisdiction*), including an

employee advocate who is an attorney, the grievant must promptly inform the UGO and the ~~respondent~~ *University representative*. The University ~~administrator~~ *representative* may be represented by an attorney provided by the Office of the General Counsel, only if an attorney represents the grievant (including an employee advocate who is an attorney), or if the grievant is an attorney.

Subd. 7. Confidentiality.

The UGO and hearing panels shall not disclose any documents or information concerning a grievance except as necessary to comply with procedures for conducting the hearing, or as permitted or required by law. All hearings will be closed to the public.

Subd. 8. Witness Testimony.

~~Every m~~ *Members* of the University community ~~is~~ *are* strongly encouraged to be cooperative if they are requested to provide testimony at a hearing under this policy.

Subd. 9. Awards.

No panel under the UGP shall have any authority to issue a financial award to any employee beyond back pay and benefits actually lost, together with reinstatement. No panel shall have authority to order compensation for fees and expenses of advocates, pain and suffering, emotional distress, penalties or punitive damages.

Subd. 10. Enforcement.

It is the responsibility of the University to faithfully carry out its responsibilities under this policy, and to enforce the terms of any binding decision under this policy. The University's deferral of jurisdictional challenges until Phases III and IV is not a waiver of its right to raise these challenges at Phases III and IV.