

SECTION K. RESOLUTION OF DISPUTES *(Last revised May 8, 2015)*

Commented [RS1]: Comments attributed to Rhonda Scott are actually comments from the UGO. They were done on a computer used by Rhonda Scott.

K.1 General Information

Colorado State University is committed to the timely and fair resolution of disputes. ~~This s~~Section K describes procedures for a CSU employee who is a faculty member or administrative professional to challenge a decision, recommendation or action by a supervisor that has or will have an adverse academic and/or professional impact on the faculty member or administrative professional and that is unfair, unreasonable, arbitrary, capricious, or discriminatory. If a decision, recommendation or action by a supervisor is retaliatory, it may serve as the basis for a grievance if it has or will have an adverse academic and/or professional impact on the faculty member or administrative professional and is unfair, unreasonable, arbitrary, capricious, or discriminatory. ~~The University Grievance Program generally~~ Section K provides three avenues for resolution of such claims: a) informal conciliation, b) mediation, and c) a formal grievance hearing process.

Commented [RS2]: Only CSU employees can use the CSU grievance process.

Several offices on campus are available to assist with the resolution of other disputes. See the website for the Office of the Ombuds and Employee Assistance Program for details and contact information. An overview of the procedures described in ~~this s~~Section K can be found on the website of the University Grievance Officer.

K.1.1 Participants in the ~~Grievance~~ Section K Process and Definition of Terms

Employee Classification – The type of position, either faculty member or administrative professional, held by the employee.

Commented [RS3]: This definition is needed since Faculty and Administrative Professionals use different mediators and different members of the Grievance Panel.

Grievance Panel – A pool of faculty members or administrative professionals who are elected by their peers and who are eligible to serve on Hearing Committees.

Commented [RS4]: This is just moved to the correct place in alphabetical order.

Grievant – A CSU employee who is a faculty member or administrative professional and who asserts that one or more decisions, recommendations or actions by a supervisor (1) has an adverse academic and/or professional effect on the faculty member or administrative professional, and (2) is unfair, unreasonable, arbitrary, capricious, or discriminatory.

Hearing Committee – A group of ~~between three and five~~ (3-5) faculty members or administrative professionals from ~~the a University~~ Grievance Panel who are convened to review and make recommendations about a Grievance.

Parties – The Parties to a Grievance are the Grievant(s) and the Supervisor(s).

Commented [RS5]: In the past, there has been some confusion regarding the definition of the term "parties."

Responsible Administrator – A university official to whom the ~~s~~Supervisor in a Grievance reports and who oversees the activities of the unit where the Grievant is employed.

Reviewing Administrators – University officials, namely the Provost and President, responsible for reviewing and approving recommendations from a Hearing Committee and deciding whether or not to accept them, ~~namely the Provost and President~~. These senior officials are also responsible for supporting, respecting, and enforcing the process and providing required financial resources.

Commented [RS6]: The President and the Provost decide whether or not to accept recommendations from the hearing Committee. They don't have to approve of them in order to accept them.

Supervisor – A university administrator, faculty member, or administrative professional who either directly oversees the work of the Grievant or who makes decisions directly affecting the terms and conditions of the Grievant's employment. A supervisor also can be a state classified employee who directs the work of an administrative professional.

University Grievance Officer (UGO) – The university official responsible for administering the ~~grievance~~ Section K process, advising Grievants and Supervisors, and coordinating involvement by others.

Commented [RS7]: The grievance process is only one part of the Section K process.

~~University Grievance Panel — A pool of faculty members or administrative professionals who are elected by their peers and volunteer to serve on a Hearing Committee, as needed and as available.~~

University Mediator (UM) – A neutral person from the university community appointed by the UGO to facilitate a resolution of a dispute or Grievance between a Grievant and a Supervisor.

K.2 Expectations for Members of the University Community

- a. Cooperation and participation by the members of the University community in the resolution of a complaint under these procedures is necessary.
- b. All witnesses shall be truthful in their testimony. Failure to comply with this expectation may result in the imposition of University sanctions.
- c. No person shall restrain, interfere with, coerce, attempt to intimidate, or take any reprisal against a participant in the Section K process. Failure to comply with this expectation may result in the imposition of University sanctions.

K.3 Definition of an Action, Grievable Action, and Grievance

An Action is a decision, recommendation or other act by a Supervisor.

A Grievable Action is an Action by a Supervisor that has or will have an adverse academic and/or professional effect on the Grievant and is unfair, unreasonable, arbitrary, capricious, or discriminatory. If an Action by a Supervisor is retaliatory, it may serve as the basis for a Grievance if it has or will have an adverse academic and/or professional impact on the Grievant and is unfair, unreasonable, arbitrary, capricious, or discriminatory.

A Grievance is a written complaint by a Grievant asserting that a Grievable Action has occurred.

K.3.1 A Grievable Action does not include:

- a. An issue that does not individually affect a faculty member or administrative professional, such as dissatisfaction with a university policy of general application.
- b. Actions specified in the *Academic Faculty and Administrative Professional Manual* as “final” and thus not subject to redress through the grievance process. Any action deemed “final” constitutes exhaustion of internal grievance procedures.
- c. An act by any person who is not the Grievant’s Supervisor ~~or responsible administrator~~.
- d. Terms agreed to by the Grievant under a Section K mediation agreement.
- e. Acts in response to ~~possible~~ violations of law or endangerment of public safety.
- f. A subsequent complaint for the same action by the same supervisor once a Grievance regarding the original complaint has concluded.
- g. Termination of “at-will” employees. For information about the university’s policy regarding at-will employees and the recommended steps and considerations for termination of at-will employees, employees should refer to the university policy for Administrative Professionals and Non-Tenured Academic Faculty (“At Will” Employment) found in the CSU Policy Library (see also Section D.5.6 and E.2.1 of the *Academic Faculty and Administrative Professional Manual*). Employees may contact the University Grievance Officer with questions about disciplinary action or termination of at-will employees.

K.3.2 Types of Grievable Actions and Burden of Proof

K.3.2.1 (“Class A”)

In a Grievance that involves a complaint about the following specific actions, the burden of proof falls upon the Supervisor:

- a. termination of contractual rights;
- b. reduction of salary and/or demotion;
- c. violation of academic and/or intellectual freedom; or
- d. assignment of unreasonable workload.

K.3.2.2 (“Class B”)

In a Grievance that involves complaints about a term or condition of employment other than those specific cases that are identified above in Section K.3.2.1, the burden of proof falls upon the Grievant. Examples of such Grievances include:

- a. decision on the amount of salary;
- b. denial of reappointment;
- c. denial of tenure and/or promotion or tenure;
- d. receipt of a lower evaluation than deserved on a performance review; or
- e. denial of sabbatical leave.

K.3.3 Determination of the Validity of a Grievance

a. The UGO shall determine whether a Grievance sets forth a Grievable Action, i.e., whether there is a sufficient basis to pursue ~~mediation (see Section K.8)~~ and/or a hearing (see Section K.9), based on the written complaint by the Grievant and the Supervisor’s response, as well as any supporting materials.

Commented [RS8]: Mediation can be pursued even if the action is not grievable.

The UGO may seek appropriate legal advice (see ~~Section K.12.5~~ Section K.12.6). This determination by the UGO shall be made within five (5) working days of receiving the Grievant's written complaint and the Supervisor's response.

b. If the Grievant disagrees with the UGO's determination, he or she may appeal this decision. Such an appeal must be made in writing to the Chair of the Grievance Panel (see Section K.11.1) having the same Employee Classification as the Grievant within ten (10) working days of receiving written notification via email of the determination by the UGO. If such an appeal is submitted, the Chair of the Grievance Panel shall form an Appeal Committee consisting of three (3) members from the Grievance Panel, including the Chair of the Grievance Panel, for the purpose of reviewing whether the UGO's determination should be reversed or affirmed. The Chair of the Grievance Panel shall chair the Appeal Committee and recruit members following the same procedure as for the formation of a Hearing Committee (see Section K.11.4). The Appeal Committee shall consider the appeal, the written Complaint of the Grievant and any supporting materials provided by the Grievant, as well as the response of the Supervisor and any supporting materials that are included. Within ~~five (5)~~ ten (10) working days of the submission of the appeal, the Appeal Committee, with legal advice if appropriate, shall make a determination solely regarding the validity of the Grievant's appeal, specifically whether the Grievance sets forth a Grievable Action. The Appeal Committee's determination shall be made by a majority vote. The Appeal Committee's determination shall be final. The Appeal Committee shall include a written report to the UGO and the Grievant notifying them of its decision. If the Appeal Committee reverses the determination of the UGO, the members of this Appeal Committee shall not serve on a Hearing Committee for this Grievance.

c. If it is determined that a Grievance sets forth a Grievable Action, then the UGO shall make a determination of whether the Grievance is Class A or Class B.

Commented [RS9]: This was moved here from elsewhere.

K.3.4 Basis of Proof

The basis of proof regarding a Grievable Action is determined by a preponderance of the evidence (i.e., that the claim is more likely to be true than not to be true).

K.4 The Right to Grieve

K.4.1 Persons Entitled to Grieve

Any faculty member or administrative professional may pursue resolution of a Grievable Action. Grievances by more than one employee from a single administrative unit may be joined into a common grievance if, in the opinion of the UGO, their Grievances have sufficient commonality to be heard collectively, and if those employees filing Grievances from a single unit agree to join in a common Grievance.

K.4.2 Process

If a Grievant initiates the Section K process the Grievable Action shall not be effective prior to the completion of the Section K process.

~~K.4.3 Responsibility to Respond~~ [moved to Section K.6]

~~a. The Supervisor whose decision, recommendation or action was the basis for the Grievance shall be responsible for responding to the Grievant and the UGO within five (5) working days from the day the Grievance is submitted to the UGO and the Supervisor.~~

~~b. If the Supervisor whose Action is being challenged no longer is employed by the university or no longer holds the relevant supervisory position, then the responsible administrator(s) for the unit, at his or her discretion, shall decide who should represent the unit in the Section K process. The unavailability of the original Supervisor does not affect the right of a Grievant to seek resolution. If no person in authority responds to the Grievance, the UGO shall continue with the Section K process.~~

~~c. When a faculty member has been denied promotion or tenure (see Section E.10.5.1, paragraph 6, E.13.1 paragraphs 4 and 5) in the case of a negative recommendation by the department chair, the complaint shall be directed to the department chair, who shall be responsible to respond. In the case of a negative recommendation at the college level, the complaint shall be filed against the dean, who shall be responsible to respond. In the case of a negative recommendation at the provost level, the complaint shall be filed against the provost who shall be responsible to respond.~~

K.4.43 Section K Process

In the spirit of reaching an expeditious resolution of disputes, an aggrieved party employee shall follow all applicable parts of the Section K process before initiating legal action with external agents or agencies. However, the Grievant has the right to seek legal advice from outside counsel at any point during the Grievance process. Nothing in ~~this s~~Section K supersedes the Grievant's rights under federal and/or state laws.

K.5. Initiation of the Section K Process

~~A claim of a Grievable Action must be submitted in writing by~~ In order to initiate the Section K process, an administrative professional or a faculty member ~~to~~ must contact the UGO in writing no later than twenty (20) working days after the date of the Action giving rise to the Grievable Action or that point in time when the individual could reasonably be expected to have knowledge that a

basis for a grievance existed. The UGO shall then meet with the ~~administrative professional or the faculty member~~ Grievant to discuss the claim.

If the administrative professional or faculty member does not contact the UGO in writing within the required twenty (20) working days, then they forfeit their right to pursue the Section K process (unless the UGO, at his or her discretion, decides that extenuating circumstances justify an extension of this deadline).

Within five (5) working days after meeting with the Grievant, the UGO shall contact the Supervisor to schedule a meeting to discuss the claim. After meeting with the Supervisor, the UGO will attempt to resolve the dispute through informal conciliation for a period of up to twenty (20) working days. This may include additional meetings with the Grievant and the Supervisor individually and/or together, as well as meeting with other persons as approved by the Grievant. If informal conciliation is not successful in resolving the dispute, the UGO will notify both the Grievant and the Supervisor of this outcome.

The UGO is not required to pursue informal conciliation if the Action does not constitute a Grievable Action. However, the UGO, at his or her discretion, may decide to pursue informal conciliation prior to making a determination of whether or not the Action constitutes a Grievable Action.

K.6 Mediation

K.6.1 Initiation of the Mediation Process

If the Grievant is notified by the UGO that informal conciliation was not successful in resolving the dispute, then the Grievant may choose to initiate the mediation process. This must be done within five (5) working days of receiving such notification, and this is done by submitting to the UGO a formal written Complaint. This Complaint must specify the Supervisor and the Grievable Action(s); how this Action has or will have an adverse academic and/or

Commented [RS10]: In the following paragraphs, the conciliation and mediation processes are better explained, since there has been confusion about them in the past. These processes have not been changed. Some material has been moved here from elsewhere.

professional impact on the Grievant; and how the Supervisor was unfair, unreasonable, arbitrary, capricious, and/or discriminatory. In some cases, it may be necessary for the UGO to return the Complaint to the Grievant for editing before it has an acceptable format.

If the Grievant does not contact the UGO in writing within the required five (5) working days, then they forfeit their right to pursue the mediation process or the hearing process (unless the UGO, at his or her discretion, decides that extenuating circumstances justify an extension of this deadline).

Within three (3) working days of receiving an acceptable Complaint from the Grievant, the UGO shall forward the Complaint to the Supervisor for a formal written Response. The Supervisor shall submit this Response to the UGO within five (5) working days of receiving the Complaint from the UGO. This Response shall be limited to addressing the claims and statements made in the Complaint. In some cases, it may be necessary for the UGO to return the Response to the Supervisor for editing before it has an acceptable format. Within three (3) working days of receiving an acceptable Response from the Supervisor, the UGO shall forward the Response to the Grievant.

If the Supervisor whose Action is being challenged no longer is employed by the university or no longer holds the relevant supervisory position, then the Responsible Administrator(s) for the unit shall decide, at his or her discretion, who should represent the unit in the Section K process. The unavailability of the original Supervisor does not affect the right of a Grievant to pursue the section K process.

When a faculty member is grieving the denial of tenure and/or promotion (see Section E.13.1, paragraphs 4 and 5 or Section E.10.5.1 paragraph 6), in the case of a negative recommendation by the department head, the Complaint shall be filed against the department head, who shall be responsible to respond. In the case of a positive recommendation by the department head, but a negative recommendation by the dean of the college, the complaint shall be

filed against the dean, who shall be responsible to respond. In the case of positive recommendations by both the department head and the dean, but a negative recommendation by the Provost, the complaint shall be filed against the Provost, who shall be responsible to respond.

Within five (5) working days after receiving the ~~written claim of a Grievable Action~~ Response from the Supervisor, the UGO shall ~~assign~~ select a University Mediator (UM) from the pool to mediate the dispute, and the UGO shall notify the Grievant and the Supervisor of the UM selected. The UM shall have the same Employee Classification as the Grievant. The ~~Mediation participants~~ Grievant and/or the Supervisor shall have five (5) working days from the date of the assignment of the UM this notification to object to ~~such an assignment~~ the choice of UM. ~~Such a~~An objection may be ~~raised only~~ based only on the UMs prior or current relationship with the ~~Mediation participants~~ Grievant and/or the Supervisor and/or the UM's knowledge of previous related disputes. If objections arise, the UGO may decide to select a different UM. The UGO shall make the final decision on the assignment of a UM, and the UGO shall notify the UM of his or her assignment within three (3) working days of this decision.

The UGO is not required to pursue mediation if the Action does not constitute a Grievable Action. However, the UGO, at his or her discretion, may decide to allow mediation to occur prior to making a determination of whether or not the Action constitutes a Grievable Action.

In some cases, the UGO may decide that mediation is unlikely to be productive and that the mediation process should not be initiated. This is generally the case when a faculty member is grieving the denial of tenure and/or promotion. If the UGO decides not to initiate the mediation process, he or she shall notify the Grievant and the Supervisor of this decision. The Grievant shall then decide whether or not to initiate a formal grievance hearing (see Section K.9).

~~K.6 Documentation~~ [moved to Section K.7]

~~a. Either the UGO or the UM assigned to the case may request, and is entitled to receive promptly, any and all materials from the participants in the Grievable Action that either the UGO or the UM may deem relevant to the dispute.~~

~~b. Any formal resolution reached during Mediation by the participants must be in writing and is subject to approval of legal sufficiency by the Office of General Counsel and approval by any other necessary individuals.~~

K.7 Right to Clerical Assistance [moved to Section K.8]

~~Any person initiating the Section K process has the right to clerical support from University personnel for preparation of documents for use in This process. Because maintenance of confidentiality is an important element of the Section K process, the clerical support should come from a unit at the next higher level than the one in which the Covered Member is housed (e.g., from the dean, for a faculty member, or from a vice president, for a dean).~~

K.86.2 Mediation Process

a. Within ten (10) working days of being assigned by the UGO, the UM shall meet with the ~~Mediation participants~~ Grievant and the Supervisor, discuss their respective positions, and review relevant information.

b. If the UM believes there is a reasonable chance that ~~M~~mediation efforts may produce a resolution of the dispute, the ~~Mediation participants~~ Grievant, the Supervisor, and the UM shall enter into a ~~M~~mediation ~~P~~period of up to twenty (20) working days to attempt to resolve the dispute. ~~If the Mediation Period reaches its twenty (20) working day limit without producing a resolution of the dispute, the Mediation participants may mutually agree to extend the Mediation Period by an additional ten (10) working days if they believe that this is likely to produce a resolution of the dispute. However, after the initial twenty (20) working days, either party may choose to terminate the Mediation Process and refuse any extensions of it.~~

c. The goal of mediation is for the Grievant and the Supervisor to come to a mutual agreement where reconcilable differences are resolved and where the Grievant and the Supervisor are able to work together in an amicable and productive manner in the future. Successful mediation generally requires compromise by both the Grievant and the Supervisor. If a successful agreement is reached, then the Section K process is completed. However, failure by the Supervisor to abide by the terms of the agreement is grievable.

~~ed.~~ If the UM decides that ~~M~~mediation efforts are not productive, then the UM may choose to terminate the ~~M~~mediation ~~P~~period at any time.

~~de.~~ If the ~~M~~mediation ~~P~~period expires or is terminated ~~by any party as described above~~, the UM shall ~~immediately~~ notify the UGO ~~and all Mediation participants~~ of this situation in writing within three (3) working days. The UGO shall then notify the Grievant and the Supervisor of this situation within three (3) working days of receiving this notification from the UM. The Covered Member Grievant shall then have five (5) working days after the date the UM provides such notice receiving this notification from the UGO to initiate the formal Grievance hearing process regarding any Grievable Action (see Section K.9).

~~e.~~ ~~The UM may continue to work with the Mediation participants even after a formal Grievance is initiated. However, the UM's Mediation efforts must cease before the beginning of a Grievance Hearing.~~

~~f.~~ ~~If the formal Grievance process is not initiated within the five (5) working day limit described in Section K.8.d, or if a claim of a Grievable Action is not referred to the UGO within the twenty (20) working day limit described in Section K.5, then the Grievable Action is not eligible to be heard by a Hearing Committee under the Grievance Procedure of Section K.10.~~

gf. Documentation and other communication created specifically in connection with the resolution of a dispute shall be considered to be part of the ~~Covered~~

Commented [RS11]: A formal Grievance Hearing is not initiated until mediation has been determined to be unsuccessful. Once the Hearing process has been initiated, there is no longer any attempt to mediate the dispute.

Commented [RS12]: This is now covered in earlier and later paragraphs.

~~Member's Grievant's and the Supervisor's personnel files.~~¹ Under the Dispute Resolution Act, C.R.S. 13-22-301 et seq., documents and communications that ~~resulted~~ are created solely from the ~~M~~mediation process are confidential and shall not be disclosed, and they may not be used as evidence during a Grievance Hearing, except by mutual agreement of the ~~Mediation participants~~ Grievant and the Supervisor, or as may be required by law. When a resolution is reached, documentation and other communication created during the ~~M~~mediation process shall be forwarded to the UGO, who shall retain the materials. Records created ~~by a Covered Member or a Responsible Administrator~~ prior to ~~the a Covered Member's~~ initiation of the ~~M~~mediation process are not considered confidential communications and may be used in a Grievance Hearing. Information and documents that are otherwise relevant do not become confidential merely because they are presented, discussed, or otherwise used during the course of mediation.

K.7 Documentation

- a. Either the UGO or the UM assigned to the case may request, and is entitled to receive promptly, any and all materials from the participants in the Grievable Action that either the UGO or the UM may deem relevant to the dispute.
- b. Any formal resolution reached during mediation by the participants must be in writing and is subject to approval of legal sufficiency by the Office of General Counsel and approval by any other necessary individuals.

K.8 Right to Clerical Assistance

A Grievant has the right to clerical support from University personnel for preparation of documents for use in this process. Because maintenance of confidentiality is an important element of the Section K process, the clerical support should come from a unit at the next higher level than the one in which the Grievant is housed (e.g., from the college level, for a faculty member, or from the Office of the Provost, for a department head).

Commented [RS13]: Sections K.7 and K.8 are moved here from the earlier Sections K.6 and K.7.

K.9 Initiating the Grievance Hearing Process

~~A formal Grievance must be initiated by the Grievant submitting a written complaint to the UGO and to the supervisor whose action is being challenged no later than ten (10) working days after the expiration of the Mediation Period or after the decision by the UM that Mediation will not take place, as described in Section K.8. The written Complaint shall:~~

- ~~a. Describe the nature of the Grievable Action;~~
- ~~b. Name the parties to the grievable dispute;~~
- ~~c. Describe how the Action being challenged is unfair, unreasonable, arbitrary, capricious, or discriminatory;~~
- ~~d. Identify how the Action adversely affects the Grievant in his or her present or future academic and/or professional capacity; and~~
- ~~e. Summarize the material that the Grievant is prepared to submit to support the claim. Upon receipt of the complaint from the Grievant, the supervisor shall prepare a written response (hereinafter referred to as the "Response") to the complaint and submit it to the UGO and the Grievant no later than five (5) working days after receiving the complaint. This Response should be limited to addressing the claims and statements made in the complaint.~~

If the Grievant is notified by the UGO that mediation was not successful in resolving the dispute, then the Grievant may choose to initiate the hearing process. This must be done within five (5) working days of receiving such notification, and this is done by informing the UGO in writing of the decision to initiate the hearing process. This may be done only if the Action(s) specified in the Complaint have been determined to be Grievable Action(s).

Within ten (10) working days of notification that mediation was not successful, the Grievant must submit to the UGO in writing a list of the materials that he or

Commented [RS14]: This is actually done at the start of the mediation process, which occurs before the initiation of the Hearing process. This duplication of language is an oversight from an earlier change to Section K.

Commented [RS15]: The following paragraphs clarify the order in which things must be done prior to conducting a Grievance Hearing. In particular, objections need to be raised prior to the start of the actual Hearing so that everything is ready when the hearing actually begins.

she intends to submit at the Hearing, a list of the witnesses that he or she intends to call at the Hearing, and the relevance of these materials and witnesses. Within twenty (20) working days of notification that mediation was not successful, the Grievant must submit to the UGO copies of the materials that he or she intends to submit at the Hearing. To the extent permitted by law and University policy, each of these submissions from the Grievant shall be forwarded to the Supervisor within three (3) days of their receipt by the UGO.

Within ten (10) working days of receiving the Grievant's list of materials and witnesses, the Supervisor must submit to the UGO in writing a list of the materials that he or she intends to submit at the Hearing, a list of the witnesses that he or she intends to call at the Hearing, and the relevance of these materials and witnesses. Within twenty (20) working days of receiving the Grievant's list of materials and witnesses, the Supervisor must submit to the UGO copies of the materials that he or she intends to submit at the Hearing. To the extent permitted by law and University policy, each of these submissions from the Supervisor shall be forwarded to the Grievant within three (3) days of their receipt by the UGO.

The UGO has the right to question and determine the applicability, reasonableness, and relevance to the hearing process of any submitted material. This right may include the refusal by the UGO to accept and forward submitted materials until the UGO judges that they are in compliance with the requirements of Section K (see Section K.10.4). Failure by either the Grievant or the Supervisor to bring documents into compliance with Section K requirements by a deadline set by the UGO shall, at the discretion of the UGO, result in the forwarding by the UGO of redacted materials. In this case, the person who submitted the materials will be notified of this decision and sent copies of the redacted materials. In an extreme case, the UGO may decide that the Grievant has forfeited his or right to pursue the hearing process and notify the Grievant of this decision.

K.10 Grievance ~~Procedure~~ Hearings

K.10.1 Hearing Committee

As described in Section K.11.4, a Hearing Committee shall be ~~formed~~ selected by the UGO which consists of five (5) members, one of whom shall serve as the Chair of the Hearing Committee. The UGO shall notify the Parties of the members. The Parties shall then have three (3) working days to challenge for cause members of the Hearing Committee. A challenge for cause must be based on a claim that the challenged member of the Hearing Committee, through involvement with the Grievant, the Supervisor, and/or the Grievable Action, may be incapable of rendering an impartial judgment regarding the Grievance. The UGO, with appropriate legal advice (see Section K.12.56), shall decide all such challenges. Members successfully challenged shall be excused from the Hearing Committee and replaced by the UGO as described in Section K.11.4. The UGO may excuse a member of the Hearing Committee even though actual cause cannot be proven.

The UGO shall then set the date(s), time(s), and location(s) for the Hearing and forward the Complaint and the Response to the members of the Hearing Committee the Complaint, the Response, the lists of witnesses to be called by the Parties, the materials to be submitted by the Parties, the relevance of these witnesses and materials, and any additional material that the UGO deems to be relevant to the Hearing. The UGO shall provide copies to the Parties of all material submitted to the Hearing Committee. If the UGO has decided to redact some of the material submitted by either Party, then that Party may appeal this decision in writing to the Chair of the Hearing Committee. This must be done within five (5) working days of this person being notified of the submission by the UGO. If such an appeal is submitted, the Chair of the Hearing Committee shall make a decision regarding the matter within five (5) working days of receiving the appeal. The decision of the Chair of the Hearing Committee shall be final.

Any member of the Hearing Committee may request that the UGO provide additional materials or that additional witnesses be called (with the relevance of such witnesses being explained). Upon approval of the Chair of the Hearing Committee, these requests will be accommodated to the extent permitted by law and University policy. Each Party will be sent copies of such additional materials and notified of additional witnesses and their relevance.

~~At the request of either party, or on its own initiative, the Hearing Committee may:~~

- ~~a. Instruct the parties to file further written statements and/or~~
- ~~b. Direct the parties to produce additional documents relevant to the Complaint, to the extent permitted by law, and to identify possible witnesses and the relevance of these witnesses.~~

~~The UGO has the right to question and determine the applicability, reasonableness, and relevance of any material to the Section K process. This right may include the refusal by the UGO to forward the Complaint, the Response, and/or any supporting document(s) to the Hearing Committee until the UGO judges that the documents are in compliance with the requirements of Section K (see Section K.10.4). Failure by either party to bring documents into compliance with Section K requirements by a deadline set by the UGO shall, at the discretion of the UGO, result in either forfeiture by that party of the right to pursue the matter through Section K or the forwarding by the UGO of redacted documents to the Hearing Committee.~~

~~If the Covered Member disagrees with such a decision by the UGO, he or she may appeal this decision. Such an appeal must be made in writing to the Chair of the Grievance Panel within three (3) working days of being notified of the decision by the UGO. If such an appeal is submitted, the Chair of the Grievance Panel shall refer the matter to the Chair of the Hearing Committee, who shall make a decision regarding the matter within five (5) working days of~~

~~the submission of the appeal. The decision of the Chair of the Hearing Committee shall be final.~~

~~For a Class B Grievance, S~~since the burden of proof for a Class B Grievance is on the Grievant, the Hearing Committee may decide ~~a Class B Grievance~~ without a Hearing ~~if the Hearing Committee determines~~ that the Complaint lacks substantive merit under the criteria specified in Section K.3 and that a Hearing will not take place. Such a decision requires a unanimous vote by the Hearing Committee. The Grievant shall have the right to appeal to the Provost a ~~decision rendered~~ recommendation made by ~~the a~~ a Hearing Committee without a Hearing.

K.10.2 Conduct of Grievance Hearings

The rules and procedure outlined below shall apply in any formal Grievance Hearing conducted by a Hearing Committee.

a. ~~The Hearings of a Grievance shall begin no later than ten (10) working days following the receipt of the Complaint from the Grievant. However, each party has the right to request a delay of no more than ten (10) working days upon showing a necessity to allow the proper development of the evidence and arguments, and the UGO shall have the authority to delay Hearings in order to facilitate the joining of Complaints as provided for in Section K.4.1. Grievance Hearings are confidential and closed to the public.~~

b. Each ~~p~~Party to the Grievance shall be permitted to have a maximum of two (2) advisors present, consisting of peer advisors and/or legal counsel. These advisors may help the ~~p~~Party prepare for the proceedings, including the preparation of any required written documentation, and may advise the ~~p~~Party during the proceedings, but no advisor may participate actively in the proceedings. Advisors may not make statements, objections or attempt to argue the case (however, if an advisor is called as a witness, he or she is allowed to participate in this capacity). The only persons who have standing to

Commented [RS16]: This is not correct, since the Complaint is filed before mediation ever begins.

speak at the Hearing are the members of the Hearing Committee, the UGO, the pParties to the Grievance, and any witnesses called. Each pParty shall identify his or her advisors at the opening of the Hearing and neither pParty shall have the right to delay the Hearing because of a lack of or unavailability of advisors, except if an emergency occurs.

c. The Chair of the Hearing Committee (see Section K.11.4) shall open the Hearing by determining that all parties are present and by identifying the advisors chosen by each party.

ed. Once initiated, the Hearings shall continue on a daily ~~or nightly~~ basis, depending on the convenience of the pParties, and ~~in all cases~~, the Hearing shall be concluded within ten (10) working days of its opening.

ee. ~~The P~~Parties to a Grievance have the responsibility to attend all scheduled meetings of the Hearing. No substitutes for the pParties shall be allowed. If a pParty is unable or unwilling to attend any scheduled meeting of the Hearing, the meeting may be held ex parte.

ef. If it is deemed appropriate by a majority of the members of the Hearing Committee, a person may participate in the Hearing from a different physical location (e.g., by video conference or teleconference). However, the questioning of witnesses must occur in a real-time, spontaneous format, unless a majority of the Hearing Committee concurs that this is not feasible. Any request to appear or participate in the ~~H~~Hearing from a different physical location must be made in writing and must be submitted to the Hearing Committee at least five (5) working days before the Hearing.

fg. ~~Parties to Grievances~~ The Grievant, the Supervisor, and their advisors ~~for such parties~~ are responsible for abiding by the procedures herein established. ~~Those parties~~ Anyone failing to adhere to the procedures, ~~or failing to assure that their advisors adhere to the procedures,~~ may be excluded from participation in the Hearing by a majority vote of the Hearing Committee, and

judgment shall be rendered without the presence of ~~these parties~~ any excluded persons.

~~g. The Chair of the Hearing Committee (see Section K.11.4) shall open the Hearing by determining that all parties are present and by identifying the advisors chosen by each party.~~

~~h. The Chair of the Hearing Committee shall provide each member of the Hearing Committee the opportunity to excuse himself or herself from service prior to the Hearing because of having an involvement with one or both of the parties and/or with the Action being challenged that renders him or her incapable of rendering an impartial judgment concerning the Grievance.~~

~~i. The Chair of the Hearing Committee shall provide each party the opportunity to challenge for cause members of the Hearing Committee.~~

~~1. A challenge for cause must be based on a claim that the challenged member of the Hearing Committee, through involvement with one or both of the parties and/or with the Action being challenged, may be incapable of rendering an impartial judgment regarding the Grievance.~~

~~2. The UGO, with appropriate legal advice (see Section K.12.5), shall decide all such challenges. Members successfully challenged shall be excused from the Hearing Committee and replaced as described in Section K.11.4. The UGO may excuse a member of the Hearing Committee even though actual cause cannot be proven.~~

~~j. The entirety of the Hearing shall be recorded. Upon request, either party shall be provided with a copy of this record, as well as any written material submitted during the Hearing. The Office of the Provost shall bear the cost of producing these copies.~~

K.10.3 Order of Proceedings for Grievance Hearings

Commented [RS17]: These removed paragraphs describe things that are done in advance of the start of the Hearing. It does not make sense to wait until the day of the Hearing to deal with all of this.

Subject to the restrictions of Section K.10.2.eg, the following persons are entitled to be present during the Hearing:

- a. The pParties and their advisors;
- b. The UGO, the Hearing Committee members, and their legal counsel;
- c. Witnesses when testifying; and
- d. Such other persons as are specifically authorized by a majority vote of the Hearing Committee, unless their presence is objected to by either pParty and the objection is sustained by the UGO.

The Hearing should proceed in the following order (although this order may be altered by a majority vote of the Hearing Committee with the approval of the UGO):

- a. Statement by the pParty having the burden of proof (hereinafter referred to as the "First Party").
- b. Statement by the other pParty (hereinafter referred to as the "Second Party").
- c. Presentation by the First Party of witnesses and materials, subject to the restrictions of Section K.10.4. The First Party shall have the right to call himself or herself as a witness and to call the Second Party as a witness. The Second Party shall have the right to challenge the relevancy and/or authenticity of witness testimony and submitted materials and to question each witness called by the First Party after that witness has been questioned by the First Party. Decisions on such challenges shall be rendered by the Chair of the Hearing Committee. Challenges of procedural decisions by the Chair of the Hearing Committee shall be decided by a majority vote of the remaining members of the Hearing Committee, with tie votes sustaining the Chair.

d. Presentation by the Second Party of witnesses and materials, subject to the restrictions of Section K.10.4. The Second Party shall have the right to call himself or herself as a witness and to call the First Party as a witness. The First Party shall have the right to challenge the relevancy and/or authenticity of witness testimony and submitted materials and to question each witness called by the Second Party after that witness has been questioned by the Second Party. Challenges shall be decided as described in the previous paragraph. ~~The members of the Hearing Committee shall also have the right to question each witness called by the Second Party after that witness has been questioned by the First Party.~~

Commented [RS18]: This is stated below in paragraph e.

~~e. If either party claims to have been denied access to relevant University records and/or documents, the Hearing Committee may consider this claim in making its final recommendation (see Section K.10.5). [moved to K.10.3.i]~~

~~f.~~ Members of the Hearing Committee shall have the right to direct questions to witnesses called ~~or~~ and to the ~~p~~Parties during these proceedings.

~~g.~~ Summary arguments by the First Party.

~~h.~~ Summary arguments by the Second Party.

~~i.~~ The members of the Hearing Committee shall have the authority to direct any further questions to either or both ~~p~~Parties following both summary arguments, to schedule additional meetings of the Hearing to develop points not yet clarified sufficiently, and/or to call additional witnesses. A decision to schedule additional meetings of the Hearing requires a majority vote of the Hearing Committee, ~~and such a decision shall be announced by the~~ The Chair of the Hearing Committee ~~to both parties. Both parties shall~~ notify the Parties in writing of the scheduling of additional meetings, also be informed of any points that the Hearing Committee feels require further clarification, ~~and the names and relevance~~ of any additional witnesses to be called by the Hearing Committee.

ej. If either pParty claims to have been denied access to relevant University records and/or documents, the Hearing Committee may consider this claim in making its final recommendation (see Section K.10.5).

K.10.4 Rules Regarding Witness Testimony and Submitted Materials

The following rules shall apply to any Grievance Hearing before a Hearing Committee:

- a. It shall be the responsibility of the pParty seeking to call a witness or submit material to demonstrate to the satisfaction of the Chair of the Hearing Committee the authenticity and relevance of the witness or material.
- b. Witnesses called shall have direct and personal knowledge of the points attested to and may be challenged on the ground that they lack such knowledge. A pParty calling a witness shall first establish the relevance of the testimony of the witness.
- c. Material introduced by either pParty shall be accompanied by a showing of authenticity and relevance to the Grievance. Decisions, recommendations, and actions that occur prior to the Grievable Action may be relevant to the Grievable Action if they establish a pattern of action over time.
- d. During a witness' testimony, either pParty may object to such testimony on the grounds that the witness lacks personal knowledge for such testimony or that such testimony is not relevant to the Grievance. The pParty making the objection shall state the reason(s) for the objection, and the other pParty shall have the opportunity to respond to the objection. The Chair of the Hearing Committee shall rule on the objection.
- e. The UM assigned to a specific case may neither attend the Hearing nor be called as a witness for that case.

K.10.5 Recommendation of the Hearing Committee

a. Following the completion of the Hearing, the Hearing Committee shall retire for the purpose of discussion, conference, and decision. These deliberations shall remain confidential to the full extent permitted by law. The Hearing Committee shall review the pertinent information and the Grievable Action of the Responsible Administrator which is the basis for the Grievance solely to determine whether this Action is unfair, unreasonable, arbitrary, capricious, or discriminatory, but not to substitute its judgment regarding the substantive merits of the ~~decision which is the basis for the Grievance~~ Grievable Action. ~~If the Hearing Committee concludes that there was a procedural deficiency which materially inhibited the review process, it may specify the nature of this deficiency and refer the matter back to the appropriate administrator for correction and subsequent return to the Hearing Committee.~~

Commented [RS19]: Once a Hearing is initiated, the Hearing Committee needs to make a definite recommendation. Any procedural deficiencies would be dealt with during the conciliation and mediation processes.

b. When the Hearing Committee has agreed on a recommendation (hereinafter referred to as the "Recommendation") by a majority vote, a written statement of the Recommendation shall be prepared that summarizes the relevant information and explains the reasoning that supports the Recommendation. It also shall state specifically any action necessitated by the Recommendation and identify any proposed relief to be provided. Normally, the Chair of the Hearing Committee shall oversee the preparation of this written statement of the Recommendation. However, if the Chair of the Hearing Committee opposes the majority vote, the members of the majority shall choose from among themselves a person to oversee the preparation of the written statement of the Recommendation. This person shall also represent the Hearing Committee, if necessary, during reviews and appeals.

c. ~~If the Recommendation from the Hearing Committee is not unanimous, the report shall explain the reasoning of the dissenting minority shall prepare a written statement reflecting the minority opinion, as well as that of the majority.~~

Commented [RS20]: There are not two separate reports. There is a single report that summarizes all points of view. The President and the Provost should not know which persons took which positions.

d. The written Recommendation from the Hearing Committee, ~~together with any minority report,~~ shall be submitted to the UGO by the Chair of the Hearing Committee within ten (10) working days of the completion of the Hearing.

e. Within ~~two (2)~~ three (3) working days after receiving the Recommendation from the Hearing Committee, the UGO shall ~~announce~~ send a copy of this Recommendation to ~~both the pParties and provide Written copies of the Recommendation, together with any minority report, to both parties.~~ Within this same time frame, the UGO shall provide ~~written~~ copies of the Recommendation, ~~any minority report,~~ the Complaint, the Response, the record of the Hearing, and any written material submitted during the Hearing (hereinafter referred to collectively as the "Hearing Record") to both the Provost and the President, unless the Provost and/or the President is a pParty to the Grievance. If the Provost is a Party to the Grievance, but the President is not the Hearing Record shall be sent only to the President. If the President is a Party to the Grievance, the Hearing Record in which case, the UGO shall instead send these copies be sent to the Board.

f. If the Grievable Action is the denial of tenure and/or promotion, the Hearing Record shall not be sent to the Provost.

Commented [RS21]: Denial of tenure/promotion is only grieved after the Provost has made the decision to deny it. Thus, it is not appropriate for the Provost to be involved in deciding whether or not to accept the recommendation of the Hearing Committee on the matter.

K.10.6 Appeals and Administrative Reviews

~~Decisions of a~~ A Recommendation from the Hearing Committee that no action be taken as a result of the Grievance Hearing is final, unless the Grievant chooses to appeal this Recommendation (see Section K.10.6.1). Any Recommendation from the Hearing Committee that action be taken as a result of the Grievance must be reviewed by both the Provost and President before it becomes final, unless the Provost or the President is a party to the Grievance. If the Provost is a party to the Grievance, but the President is not, the review shall be made only by the President. If the President is a party to the Grievance, the review shall be made only by the Board.

If the Grievable Action is the denial of tenure and/or promotion, only the President shall review the Recommendation.

K.10.6.1 Appeal of the Recommendation From the Hearing Committee

Whether or not the Recommendation from the Hearing Committee suggests that action be taken as a result of the Grievance, the Grievant has the right to appeal this Recommendation. This appeal must be made within ten (10) five (5) working days of receipt of the written Recommendation from the Hearing Committee, ~~and~~ it must provide reasons for the appeal, and it must not exceed five (5) pages with normal font size. ~~Failure of the Grievant to file an appeal within this time frame shall constitute his or her acceptance of the Recommendation from the Hearing Committee.~~ This appeal shall be submitted to the Provost, unless the Provost and/or the President is a ~~p~~Party to the Grievance. If the Provost is a ~~p~~Party to the Grievance, but the President is not, the appeal shall be submitted to the President. If the President is a party to the Grievance, the appeal shall be submitted to the Board.

If the Grievable Action is the denial of tenure and/or promotion, the appeal shall be submitted only to the President.

If the Grievant submits an appeal to the Provost, he or she shall send a copy of this appeal to the UGO at the same time. The UGO shall then send a copy of this appeal to the Supervisor.

K.10.6.2 Review by the Provost

~~If neither the Provost nor the President is a party to the Grievance,~~ the Hearing Record is sent to the Provost, he or she shall review the Hearing Record, together with ~~and~~ any appeal from the Grievant (hereinafter referred to collectively as the "Appeal Record"), unless the Recommendation from the Hearing Committee is suggests that no action be taken as a result of the Grievance and no appeal was submitted by the Grievant within the five (5)

Commented [RS22]: In a number of places below, the processes for dealing with conflicts of interest involving the Provost and the President are explained in more detail.

working day limit. This review shall be based only on the Appeal Record. No ~~party may introduce~~ new substantive issues may be introduced.

Upon completion of this review, the Provost shall submit a written recommendation to the President, along with a copy of any appeal from the Grievant. The recommendation from the Provost shall include a summary of the relevant information and the reasoning that supports the recommendation. The recommendation from the Provost shall modify may differ from the Recommendation from the Hearing Committee only if he or she the Provost finds that this the Recommendation from the Hearing Committee is unfair, unreasonable, arbitrary, capricious, or discriminatory. The Provost shall also send a copy of his or her recommendation to the UGO, and the UGO shall send copies of this recommendation to the Grievant and the Supervisor. The Provost shall send his or her recommendation to the President and the UGO Wwithin ten (10) working days of receiving an appeal from the Grievant or the expiration of the five (5) working day limit for submitting an appeal, the Provost shall respond by providing to all parties to the Grievance and to the UGO a written statement of his or her recommendation, which shall include a summary of the relevant information and the reasoning that supports this recommendation. A copy of this recommendation shall also be provided to the President, along with a copy of any appeal to the Provost from the Grievant.

Commented [RS23]: The UGO needs to manage this process to ensure that appropriate parties are being notified.

K.10.6.3 Appeal of the Recommendation From the Provost

~~If the Provost modifies the Recommendation from the Hearing Committee, t~~The Grievant has the right to appeal the new recommendation from the Provost. This appeal must be made within five (5) working days of receipt of the written recommendation from the Provost, it must provide reasons for the appeal, and it must not exceed two (2) five (5) pages with normal font size. Failure of the Grievant to file an appeal within this time frame shall constitute his or her acceptance of the recommendation from the Provost.

If the Grievant submits an appeal to the President, he or she shall send a copy of this appeal to the UGO at the same time. The UGO shall then send a copy of this appeal to the Supervisor and the Provost.

K.10.6.4 Review by the President

If the Hearing Record is sent to the President is not a party to the Grievance, he or she shall review the Recommendation from the Hearing Committee Hearing Record, together with any minority report, the recommendation from the Provost (unless the Provost was a party to the Grievance), and any appeals from the Grievant (hereinafter referred to collectively as the "Final Appeal Record"), unless the Recommendation from the Hearing Committee is that no action be taken as a result of the Grievance and no appeal was submitted by the Grievant within the five (5) working day limit. This review shall be based only on the Final Appeal Record, the Provost's recommendation and any appeal by the Grievant. No party may introduce new substantive issues may be introduced.

Upon completion of this review, the President shall make a final decision regarding the Grievance. This decision shall be in writing, and it shall include a summary of the relevant information and the reasoning that supports the decision. Regardless of the recommendation from the Provost, the decision of the President shall modify may differ from the Recommendation from the Hearing Committee only if he or she the President finds that this the Recommendation from the Hearing Committee is unfair, unreasonable, arbitrary, capricious, or discriminatory. The President shall send his or her written decision to the UGO Wwithin twenty (20) working days of receiving an appeal from the Grievant or the expiration of the five (5) working day limit for submitting an appeal. The UGO shall send copies of this decision to the Grievant, the Supervisor, and the Provost, the President shall respond by providing to all parties to the Grievance, the UGO, and the Provost a written statement of his or her decision, which shall include a summary of the relevant

~~information and the reasoning that supports this decision.~~ The decision of the President is final.

If the decision of the President includes taking action as a result of the Grievance, ~~he or she~~ the President shall notify the appropriate ~~parties~~ individuals of the action to be taken.

K.10.6.5 Review by the Board

If the President was a party to the Grievance, the Board shall review the Recommendation from the Hearing Committee, together with ~~any minority report and~~ any appeal from the Grievant (hereinafter referred to collectively as the "Final Appeal Record"), unless the Recommendation suggests that no action be taken as a result of the Grievance and no appeal was submitted by the Grievant within the five (5) working day limit. This review shall be based only on the Final Appeal Record. No new substantive issues may be introduced.

Upon completion of this review, the Board shall make a final decision regarding the Grievance. This decision shall be in writing, and it shall include a summary of the relevant information and the reasoning that supports the decision. The decision of the Board may differ from the Recommendation from the Hearing Committee only if the Board finds that the Recommendation from the Hearing Committee is unfair, unreasonable, arbitrary, capricious, or discriminatory. The Chair of the Board shall send this written decision to the UGO, and the UGO shall send copies of this decision to the Grievant, the Supervisor, the Provost, and the President. The decision of the Board is final.

If the decision of the Board includes taking action as a result of the Grievance, the Chair of the Board shall notify the President and the UGO of the action to be taken, and the President shall notify the appropriate individuals. ~~†This may involve special Board action and/or instruction regarding action to be taken by administrators.~~

K.11 Grievance Panels and Hearing Committees

K.11.1 Grievance Panels *(last revised August 2, 2013)*

The Faculty Grievance Panel shall be a pool of eligible Hearing Committee members consisting of ~~twenty-one (21) tenured faculty members, with at least one (1) from each college~~ one (1) tenured faculty member from each academic department and one (1) tenured faculty member from the University Libraries, and.

Commented [RS24]: The number of faculty members on the Grievance Panel has often been too small. Thus, this number is being increased. It also makes sense to have separate Grievance Panels for faculty and administrative professionals, rather than combining these two groups. This change was made in consultation with the Committee on Faculty Governance, which finds members for these panels.

The Administrative Professional Grievance Panel shall be a pool of eligible Hearing Committee members consisting of twenty-one (21) administrative professionals, representing at least four (4) administrative areas. ~~Administrative professionals~~ Each member shall have had at least five (5) years employment at half-time (0.5) or greater at Colorado State University.

No person having administrative duties, as described in Section K.11.2, shall be qualified to serve on ~~the~~ either Grievance Panel.

K.11.1.1 Duties *(last revised August 2, 2013)*

As specified elsewhere in ~~this~~ Section K, individual members of the Grievance Panel may be recruited to a) serve on individual Hearing Committees, b) serve on search committees to select a new UGO, and c) consult with the leadership of Faculty Council or the Administrative Professional Council, as appropriate, on policy matters related to procedures outlined in Section K and the activities of the UGO.

K.11.1.2 Chairs *(last revised August 2, 2013)*

Each year, a ~~Grievance Panel Chair shall be appointed jointly by th presidents~~ the Chair of the Faculty Council and ~~Administrative Professional Council shall~~ select a Chair for the Faculty Grievance Panel from among the panel's its elected members, and the Chair of the Administrative Professional Council

shall select a Chair for the Administrative Professional Grievance Panel from among its elected members. This volunteer position shall be filled by a faculty member in academic years ending in an odd number and by an administrative professional in academic years ending in an even number.

As specified ~~elsewhere~~ elsewhere in this Section K, the ~~chair's~~ chair's duties of the chairs are:

- a. To meet with the UGO ~~at least quarterly or~~ as needed to review activities of the UGO,
- b. To review challenges to the qualification ~~and classification~~ of grievances by the UGO (Section K.~~10.43.3~~),
- c. To appoint a subcommittee to seek nominations for the position of UGO and interview prospective UGO candidates (Section K.12.1),
- d. To confer with the Provost and either the Chair of Faculty Council or the Chair of the Administrative Professional Council on the appointment of a Temporary Special University Grievance Officer, as needed (Section K.12.~~67~~),
- e. To advise the UGO on policy and procedural matters covered in ~~this~~ Section K,
- f. To advise the Faculty Council and Administrative Professional Council on matters pertaining to rights and responsibilities described in ~~this~~ Section K,
- g. To provide input for the UGO's annual report (Section K.12.4.~~hi~~),
- h. ~~To assist the Faculty Council and the Administrative Professional Council in their annual evaluation of the UGO by receiving and reporting on questionnaires to parties inquiring about or involved in mediation or the grievance process. These questionnaires will be distributed by the UGO (Section K.12.4.1),~~

Commented [RS25]: This is now handled electronically, rather than using hard-copy questionnaires.

h. To provide input on the UGO's annual performance review (Section K.12.1).

K.11.2 Administrative Duties

With respect to qualification to serve on the Grievance Panel, administrative duty or duties refers to the service of those persons acting as the administrators responsible for the various administrative units, departments, colleges, and the University, and responsible for budgets and supervising and evaluating personnel other than state classified personnel, students, or postdocs. ~~The term shall cover persons having the title "Assistant Dean" or "Associate Dean".~~ This shall include administrators at the level of department head or above, but not assistant or associate department heads. ~~However,~~ Service by persons as chairs of committees, or as Principal Investigators on contracts and grants, shall not be considered to be administrative duties.

K.11.3 Election of Grievance Panel Members

~~Faculty members shall be nominated by the Faculty Council Committee on Faculty Governance, who shall provide a full slate of nominees for election by the Faculty Council.~~ Each academic department and the Libraries shall elect one (1) member of the Grievance Panel from among the eligible members of that unit. The electorate eligible to vote for this member of the Faculty Grievance Panel shall consist of all regular full-time, regular part-time, senior teaching, special, and transitional members of the faculty in that unit who have no administrative duties (see Section K.11.2). The Faculty Council Committee on Faculty Governance shall establish uniform nomination and election procedures throughout the University and shall supervise elections in academic departments and the Libraries to ensure secret ballots and impartial election procedures.

Administrative professionals shall be elected by the Administrative Professional Council.

Nominations for candidates shall be opened on February 15, annually, and election shall be held in April. Election shall be for a three (3) year term starting on the first (1st) day of Fall semester, with the terms staggered so that approximately one-third (1/3) of the faculty members and one-third (1/3) of the administrative professionals have their terms expire each year. ~~Grievance Panel members who have served two (2) consecutive terms shall be ineligible for re-election for a period of two (2) years.~~ Vacancies shall be filled by elections at other times throughout the year following the procedures set forth above.

~~When a vacancy occurs on the a Grievance Panel, it shall be filled by appointment, unless the vacancy occurs within one (1) month before the next regular election, in which case, the unexpired term shall be filled at that election. An appointment of a faculty member shall be made by the Faculty Council Committee on Faculty Governance, and an appointment of an administrative professional shall be made by the Administrative Professional Council.~~

K.11.4 Formation of Hearing Committees

The UGO shall establish a rotation schedule for the members of the Grievance Panels to serve on Hearing Committees. However, at the discretion of the UGO, members may be skipped due to issues such as conflicts of interest, availability, or appropriate criteria (such as faculty rank). ~~A Hearing Committees~~ shall consist of five (5) members having the same ~~appointment~~ Employee ~~Classification (faculty member or administrative professional)~~ as the Grievant. The UGO shall provide each selected member of the Hearing Committee the opportunity to excuse himself or herself from service because of having an involvement with one or both of the parties and/or with the Action being challenged that causes him or her to be incapable of rendering an impartial judgment concerning the Grievance. The UGO shall select replacements for any members who excuse themselves.

Each Hearing Committee scheduled to hear a Grievance shall select from its membership a Chair, who shall be a voting member of the Hearing Committee, preside over the Hearing, maintain orderly procedures, and supervise the preparation of the written Recommendation regarding the Grievance.

~~If a member of the Hearing Committee excuses himself or herself as described in Section K.10.2.g or is excused by the UGO due to a challenge for cause, he or she shall be replaced on the Hearing Committee by the next person of the same appointment classification in the rotation order. If the Chair of the Hearing Committee is replaced in this manner the new members of the Hearing Committee shall select a new Chair from among themselves. In the event that it is impossible to establish a full Hearing Committee from the membership of the Grievance Panel, each of the parties in the Grievance shall nominate two (2) persons for each vacant position, and the UGO shall name the replacements from among those nominees the UGO and either the Chair of Faculty Council or the Chair of the Administrative Professional Council, whichever has the same Employee Classification as the Grievant, shall jointly select the remaining members of the Hearing Committee, subject to further challenge for cause as provided in Section K.10.12.h.~~

Commented [RS26]: This is now done before the Hearing Committee is convened.

K.12 University Grievance Officer

K.12.1 Selection, Qualifications, and Term of the University Grievance Officer

In October of the third year of the UGO's term of office, the chairs of the Grievance Panels shall jointly appoint a subcommittee of the Grievance Panel memberships, consisting of three (3) faculty members and three (3) administrative professionals, to provide nominations for a UGO to serve the next three-year term. In November, this subcommittee shall solicit nominations, and, in January, it shall recommend ~~two (2) or three (3)~~ qualified persons to the President through the Provost. The UGO shall be selected by the President, after consultation with the members of the subcommittee during the second

week of February. The selection must be confirmed by a majority vote of those cast by the Faculty Council and a majority vote of those cast by the Administrative Professional Council in April, such confirmations being conducted separately. In the event that a majority vote of those cast is not attained by both the Faculty Council and the Administrative Professional Council, another candidate shall be proposed by the President. The UGO shall take office on July 1 following the vote and shall report to the Provost. The Provost shall keep the President informed regarding the activities of the UGO.

The UGO shall be a tenured, full-time member of the faculty with at least the rank of associate professor and shall have no administrative duties (see Section K.11.2) throughout the term of service. The term of office shall be three (3) consecutive one (1) year appointments. There is no limit to the number of terms a UGO may serve.

The UGO shall be evaluated annually. In February, the Executive Committee of Faculty Council and the Executive Committee of the Administrative Professional Council shall each send a written performance evaluation to the Provost. The Provost shall prepare the official evaluation of the UGO and submit it to the President ~~preceding~~ each year prior to the reappointment. The Provost shall also send a copy of this evaluation to the department head of the UGO for use in his or her annual evaluation. If the position of UGO becomes vacant before expiration of the term, the Grievance Panel shall recommend an interim appointment to the President, through the Provost, to serve until a confirmed UGO, selected the following February, takes office on July 1.

K.12.2 Oversight of the University Grievance Officer *(last revised August 2, 2013)*

The UGO shall be accountable to the Faculty and Administrative Professional Councils on matters pertaining to carrying out the responsibilities of the UGO. The UGO shall seek the ~~advice~~ advice of the Chairs of the Grievance Panels on procedural matters. The UGO shall report administratively to the Provost.

K.12.3 Service of the University Grievance Officer

The UGO shall be appointed part-time, depending upon the work load. The appointment fraction and associated funds shall be negotiated ~~at least annually~~ among the UGO, the Provost, and the UGO's department head and may be reviewed as necessary ~~during the year~~. Adequate secretarial and expense support shall be provided by the Office of the Provost.

K.12.4 Duties of the University Grievance Officer *(last revised May 8, 2015)*

The UGO shall be responsible for:

- a. Maintaining a record of actions taken as part of the processes in Section K and Section E.15.
- b. Coordinating and facilitating the activities of the Grievance Panels by maintaining the records of the Panels, scheduling all meetings of the Panels for informational and organizational purposes, scheduling meetings of ~~the~~ Hearing Committees, calling individuals to appear before ~~the~~ Hearing Committees, and establishing the rotation order for service by the members of the Panels on Hearing Committees.
- c. Overseeing the processes of Section K and Section E.15 and preparing reports to the Grievance Panels, including recommendations for improving these processes.
- d. Assuring that faculty members and administrative professionals are familiar with the provisions, components, purposes, and procedures of the processes of Section K and Section E.15.
- e. Consulting with at-will employees and the Office of General Counsel about disciplinary action or termination of at-will employees, as discussed in Section K.3.1.g.

f. Making recommendations to Hearing Committees regarding guidelines for the operation of these committees pursuant to Section K and Section E.15.

g. Advising potential and active parties to a Grievance of their prospects for sustaining a Grievance, including their responsibilities for following the procedural rules of Section K.10.

h. Facilitating the conduct of Hearings ~~decision~~ pursuant to Section K and Section E.15.

i. Preparing an annual report, ~~in consultation with the Chair of the Grievance Panel~~ each ~~June~~ December for the Faculty Council and Administrative Professional Council, which summarizes activities and recommendations during the previous year.

j. Maintaining and updating the list of University Mediators (UMs).

k. Appointing appropriate UMs to mediate disputes involving faculty members, administrative professionals, and/or administrators.

l. Coordinating orientation and training of University Mediators and Grievance Panel members

m. Assisting ~~the~~ Faculty Council and the Administrative Professional Council in their annual evaluations of the UGO by ~~distributing questionnaires to parties inquiring about or involved in mediation or the grievance process, and assigning numerical identifiers to each questionnaire, thus maintaining participants' anonymity~~ notifying all participants in the Section K process of the opportunity to participate in anonymous surveys regarding the performance of the UGO.

K.12.5 Right to Extend Deadlines

At his or her discretion, the UGO may extend any deadlines or timelines described in Section K and Section E.15. An individuals involved in these processes may submit to the UGO an objection to such an extension, and the UGO shall give such an objection serious consideration. However, the final decision regarding an extension rests with the UGO.

Commented [RS27]: This has always been the case, but it is now stated here explicitly.

K.12.56 Legal Advice

At any time, the UGO may seek legal advice from the Office of General Counsel for the University. If the UGO determines that it is appropriate to seek legal advice from outside the Office of the General Counsel for the University, he or she may request that the Office of the General Counsel engage the services of an attorney from the Colorado Attorney General's Office to give legal advice to the UGO. If the UGO determines that it is necessary to seek legal advice from an attorney who is outside of the Office of the General Counsel and the Colorado Attorney General's Office, the UGO may make such a request to the Office of the General Counsel. Any such engagement must be approved by the Colorado Attorney General's Office. A denial by the Colorado Attorney General's Office of such a request is ~~not grievable~~ final.

K.12.67 Temporary Special University Grievance Officer

In the event of a conflict of interest by the UGO in a dispute, or in the event that the UGO becomes a Grievant or requests to be recused, the ~~Provost~~ President, after consultation with the chairs of the Grievance Panels ~~and the President~~, shall appoint a Temporary Special UGO for that dispute. The Temporary Special UGO shall have all the duties described herein of the UGO for the duration of the specific dispute for which he or she is appointed.

K.13 University Mediators

K.13.1 Qualifications of University Mediators

The individuals nominated and recommended as UMs shall be presently employed or retired faculty members or administrative professionals who have the skills, credibility and commitment that would enable them to discharge their duties effectively as UMs. ~~A Currently employed individuals~~ shall obtain prior approval from their department head/supervisor. The UGO is not eligible to serve as a UM.

K.13.1.1 Qualifications of University Mediators for Faculty

Each UM for faculty members shall be a tenured, full-time faculty member with at least the rank of associate professor or a person a faculty member with a transitional or emeritus/emerita appointment who previously held such a rank an appointment. He or she shall have no administrative duties (see Section K.11.2) throughout the term of service. ~~Within ten (10) working days of an appeal from the Grievant or a Hearing Committee decision that was not appealed, the Provost shall respond by providing to all parties to the Grievance and the UGO a written statement of the decision rendered with a summary of relevant evidence and the reasoning that sustains the decision.~~

Commented [RS28]: The wording being removed was place here by mistake. It has been correctly placed elsewhere in Section K.

K.13.1.2 Qualifications of University Mediators for Administrative Professionals

Each UM for administrative professionals shall be employed at least half-time (0.5) as an administrative professional at Colorado State University or, ~~if retired, shall have been employed by the University at least half-time (0.5) as an administrative professional~~ a person who previously held such an appointment.

K.13.2 Selection, Terms, and Evaluation of University Mediators for Academic Faculty *(last revised August 2, 2013)*

The Chair of Faculty Council and the Provost shall solicit nominations for faculty UMs ~~from the faculty members~~ prior to the end of each academic year.

In consultation with the Executive Committee of Faculty Council ~~Executive Committee, the Council of Deans, and any other appropriate groups~~, the Chair of Faculty Council and the Provost shall jointly forward recommendations to the President. The President shall appoint at least two (2) faculty UMs for the upcoming year. The faculty UMs ~~for faculty members~~ shall take office on July 1 following their appointment by the President.

University Mediators may be eligible to receive supplemental pay based on hours devoted to mediation activities. Moreover, the Provost and the faculty member's ~~immediate supervisor~~ department head may choose to provide an adjustment in effort distribution and/or workload. In this case, individuals appointed as ~~academic~~ faculty UMs may negotiate this change in effort distribution and/or workload with their immediate supervisor department head, to reflect their involvement in the ~~M~~mediation process.

The term of office for a faculty UM shall be three (3) consecutive one (1) year appointments on an at-will basis. There is no limit to the number of terms a UM may serve. ~~Each UM shall be evaluated annually. A faculty UM who has mediated one or more cases during the calendar year shall be evaluated the following February by the Executive Committee of Faculty Council, who shall send a written performance evaluation to the Provost. The Provost shall then prepare the official evaluation of the UM and submit it to the President prior to the reappointment of the UM. In February, the Executive Committee of Faculty Council who shall send a written performance evaluation to the Provost, and the Provost shall then prepare the official evaluation of the UM and submit it to the President preceding each reappointment.~~ If the need arises to appoint an additional UM during the academic year, the Chair of Faculty Council and the Provost shall recommend jointly an interim appointment to the President to serve until a new UM is selected and takes office the next July 1.

K.13.3 Selection, Terms, and Evaluation of University Mediators for Administrative Professionals *(last revised August 2, 2013)*

The Chair of the Administrative Professional Council and the Vice President for University Operations shall solicit nominations for administrative professional UMs ~~for administrative professionals~~ prior to the end of each academic year. In consultation with the Executive Committee of the Administrative Professional Council ~~and any other appropriate groups~~, the Chair of the Administrative Professional Council and the Vice President for University Operations shall jointly forward recommendations to the President. The President shall appoint at least two (2) administrative professional UMs for the upcoming year. The administrative professional UMs ~~for administrative professionals~~ shall take office on July 1 following their appointment by the President.

University Mediators may be eligible to receive supplemental pay based on hours devoted to mediation activities. Moreover, the Vice President for University Operations and the administrative professional's immediate supervisor may choose to provide an adjustment in effort distribution and/or workload. In this case, individuals appointed as administrative professional UMs may negotiate this change in effort distribution and/or workload with their immediate supervisor to reflect their involvement in the ~~M~~mediation process.

The term of office for an administrative professional UM shall be three (3) consecutive one (1) year appointments on an at-will basis. There is no limit to the number of terms a UM may serve. ~~An administrative professional University Mediators UM who have~~ has mediated one or more cases during the calendar year shall be evaluated ~~in that calendar year~~ the following February by the Executive Committee of the Administrative Professional Council, who shall send a written performance evaluation to the Vice President for University Operations. The Vice President for University Operations shall then prepare the official evaluation of the UM and submit it to the President ~~preceding each~~ prior to the reappointment of the UM. If the need arises to appoint an additional UM during the academic year, the Chair of the Administrative Professional Council and the Vice President for University Operations shall jointly recommend an

interim appointment to the President to serve until a new UM is selected and takes office the next July 1.

K.14 Key Time Limits Within the Mediation and Grievance Processes

Commented [RS29]: This table is not accurate. There are too many special cases for any such table to be accurate. The presence of this table has led to considerable confusion in the past.

Action	Maximum Number of Days
(a) Action discovered	
(b) Submission of written claim to UGO	20 days after (a)
(c) Appointment of University Mediator (UM)	5 days after (b)
(d) Decision by UM whether to attempt mediation	10 days after (c)
(e) Mediation Period	20 days after (d)
(f) Submission of written Grievance Complaint	5 days after (d) and (e)
(g) Written Response from Responsible Administrator	5 days after (f)
(h) Form Hearing Committee and begin Hearing	10 days after (f)
(i) Conclude Hearing	10 days after (h)
(j) Recommendation of Hearing Committee	10 days after (i)
(k) Notification of Recommendation by UGO	2 days after (j)
(l) Appeal of Hearing Committee Recommendation	5 days after (k)
(m) Review by Provost	10 days after (k) and (l)
(n) Appeal of Provost Recommendation	5 days after (m)
(o) Review by President	20 days after (n)

¹ The term “~~personal~~ personnel file” refers to information collected because of the employer-employee relationship, and it does not necessarily refer to a single physical file. In order for information to be part of the personnel file, there must be a reasonable expectation that such information will be kept private. Information in the personnel file is generally not made available for public inspection, but it is available to the individual and to his or her supervisors.

Rationale: Most of the changes simply bring the policy into line with current practice and provide additional clarity.

In addition, the Grievance Panel is separated into two grievance Panels, one for faculty and one for administrative professionals. Also, the constitution of the Faculty Grievance Panel is changed to increase its membership. There have been serious problems in the recent past with the small number of persons on the panel.

Also, in the case of denial of tenure and/or promotion, the Recommendation of the Hearing Committee should not be sent to the Provost, since the Provost has already recommended against tenure and/or promotion prior to the Hearing.

Finally, the table of timelines in section K.14 is deleted, since it is not correct. The timelines are not simple enough to be summarized in such a table, since they depend on a number of factors that are different in different situations.