

Date: August 22, 2024

To: Melinda Smith
Chair, Faculty Council

From: Jennifer Martin
Chair, Committee on Responsibilities and Standing of Academic Faculty

Subject: **Faculty Manual Section K Resolution of Disputes**

The Committee on Responsibilities and Standing of Academic Faculty submits the following:

MOVED, THAT SECTION K OF THE ACADEMIC FACULTY AND ADMINISTRATIVE PROFESSIONAL MANUAL BE REVISED AS FOLLOWS:

Section K. Resolution of Disputes

(last revised February 9, 2024)

K.1 General Information *(last revised February 9, 2024)*

Colorado State University is committed to the timely and fair resolution of disputes. 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, and/or capricious. 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, and/or capricious. Section K provides ~~three~~ two avenues for resolution of such claims: ~~a) informal conciliation, b) mediation, and c) a formal grievance hearing process.~~

Several additional offices on campus are available to assist with the resolution of conflicts. See the website <https://employeeconflictresolution.colostate.edu> for a list of such resources. In particular, note the Office of the Ombuds. An overview of the procedures described in Section K can be found on the website <https://universitygrievanceofficer.colostate.edu> of the University Grievance Officer.

K.1.1 Participants in the Section K Process and Definition of Terms *(last revised December 6, 2019)*

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

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.

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, and/or capricious.

Hearing Committee – A group of five (5) faculty members or administrative professionals from a 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).

Responsible Administrator – A university official to whom the 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 recommendations from a Hearing Committee and deciding whether or not to accept them. These senior officials are also responsible for supporting, respecting, and enforcing the process and providing required financial resources.

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 Section K process advising Grievants and Supervisors, and coordinating involvement by others.

~~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 *(last revised December 6, 2019)*

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, and/or capricious. 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, and/or capricious.

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: (last revised December 6, 2019)

- 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.
- d. Terms agreed to by the Grievant under a Section K mediation agreement.
- e. Acts in response to violations of law or endangerment of public safety.
- f. Placement on paid administrative leave.
- g. A subsequent complaint for the same action by the same supervisor once a Grievance regarding the original complaint has concluded.
- h. 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 (last revised February 9, 2024)

K.3.2.1 (“Class A”) (last revised December 6, 2019)

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

- a. reduction of salary and/or demotion;
- b. violation of academic and/or intellectual freedom; or
- c. 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. annual salary adjustment;
- b. denial of tenure and/or promotion;
- c. receipt of a lower evaluation than deserved on a performance review;
- d. 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 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. The UGO may seek appropriate legal advice (see 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, the Grievant may appeal this decision. Such an appeal must be made in writing to the Chair of the Grievance Panel (see Section K.11.1) for the Employee Classification of 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 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 send 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.

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 (1) 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 Section K Process

In the spirit of reaching an expeditious resolution of disputes, an aggrieved 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 Section K shall supersede the Grievant's rights under federal and/or state laws.

K.5 Initiation of the Section K Process

In order to initiate the Section K process, an administrative professional or a faculty member 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 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 the UGO's 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~~ mediation 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~~ mediation 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~~ mediation if the Action does not constitute a Grievable Action. However, the UGO, at the UGO's discretion, may decide to pursue informal ~~conciliation~~ mediation prior to making a determination of whether or not the Action constitutes a Grievable Action.

K.6 Mediation *(last revised February 9, 2024)*

K.6.1 Initiation of the Mediation Formal Hearing Process *(last revised February 9, 2024)*

If the Grievant is notified by the UGO that informal ~~conciliation~~ mediation was not successful in resolving the dispute, then the Grievant may choose to initiate the ~~mediation~~ formal hearing process. This must be done within ~~five (5)~~ ten (10) 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 professional impact on the Grievant; and how the Supervisor was unfair, unreasonable, arbitrary, and/or capricious. 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. The formal hearing process will take place only if it is determined that at least one of the Action(s) specified in the Complaint is a Grievable Action.

If the Grievant does not contact the UGO in writing within the required ~~five (5)~~ ten (10) working days, then they forfeit their right to pursue the ~~mediation process or the~~ formal hearing process (unless the UGO, at the UGO's 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 is no longer employed by the university or no longer holds the relevant supervisory position, then the Responsible Administrator(s) for the unit shall decide, at the Administrator's 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.13.2,~~ paragraph 6 E.13.4 or Section ~~E.10.5.1 paragraph 6~~ E.10.5.4), 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 Response from the Supervisor, the UGO shall 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 Grievant and/or the Supervisor shall have five (5) working days from the date of this notification to object to the choice of UM. Such an objection may be~~

based only on the UMs prior or current relationship with 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 the UM's 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 the UGO's 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, the UGO 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.6.2 Mediation Process

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

b. If the UM believes there is a reasonable chance that mediation efforts may produce a resolution of the dispute, the Grievant, the Supervisor, and the UM shall enter into a mediation period of up to twenty (20) working day to attempt to resolve the dispute.

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.

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

e. If the mediation period expires or is terminated, the UM shall notify the UGO 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 Grievant shall then have five (5) working days after receiving this notification from the UGO to initiate the formal hearing process regarding any Grievable Action (see Section K.9).

f. Documentation and other communication created specifically in connection with the resolution of a dispute shall be considered to be part of the Grievant's and the Supervisor's personnel file. Under the Dispute Resolution Act, C.R.S. 13-22-301 et seq., documents and communications that are created solely from the 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 Grievant and the Supervisor, or as may be required by law. When a resolution is reached, documentation and other communication created during the mediation process shall be forwarded to the UGO, who shall retain the materials. Records created prior to

~~initiation of the 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.9 Initiating the Hearing Process

~~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 receiving the Response from the Supervisor, the Grievant must submit to the UGO in writing a list of the materials that the Grievant intends to submit at the Hearing, a list of the witnesses that the Grievant 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 receiving the Response from the Supervisor, the Grievant must submit to the UGO copies of the materials that the Grievant 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 the Supervisor intends to submit at the Hearing, a list of the witnesses that the Supervisor 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 material that the Supervisor 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 the Grievant's right to pursue the hearing process and notify the Grievant of this decision.~~

K.7 Documentation *[moved here from earlier]*

~~a. Either the 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 *[moved here from earlier]*

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).

K.109 Grievance Procedure

K.109.1 Hearing Committee

As described in Section K.11.4, a Hearing Committee shall be 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.12.6), 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 locations(s) for the Hearing and forward 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.

For a Class B Grievance, since the burden of proof is on the Grievant, the Hearing Committee may decide without a Hearing 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 recommendation made by a Hearing Committee without a Hearing.

K.109.2 Conduct of Grievance Hearings

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

- a. Grievance Hearings are confidential and closed to the public.
- b. Each 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 Party prepare for the proceedings, including the preparation of any required written documentation, and may advise the 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, the advisor is allowed to participate in this capacity). The only persons who have standing to speak at the Hearing are the members of the Hearing Committee, the UGO, the Parties to the Grievance, and any witnesses called. Each Party shall identify their advisors at the opening of the Hearing and neither Party 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.
- d. Once initiated, the Hearings shall continue on a daily basis, depending on the convenience of the Parties, and, the Hearing shall be concluded within ten (10) working days of its opening.
- e. The Parties to a Grievance have the responsibility to attend all scheduled meetings of the Hearing. No substitutes for the Parties shall be allowed. If a Party is unable or unwilling to attend any scheduled meeting of the Hearing, the meeting may be held ex parte.
- f. 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 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.
- g. The Grievant, the Supervisor, and their advisors are responsible for abiding by the procedures herein established. Anyone failing to 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 any excluded persons.
- h. 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.109.3 Order of Proceedings for Grievance Hearings

Subject to the restrictions of Section K.409.2.g, the following persons are entitled to be present during the Hearing:

- a. The Parties 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 Party 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 Party having the burden of proof (hereinafter referred to as the "First Party").
- b. Statement by the other Party (hereinafter referred to as the "Second Party").
- c. Presentation by the First Party of witnesses and materials, subject to the restrictions of Section K.409.4. The First Party shall have the right to call oneself 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.409.4. The Second Party shall have the right to call oneself 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.
- e. Members of the Hearing Committee shall have the right to direct questions to witnesses called and to the Parties during these proceedings.
- f. Summary arguments by the First Party.
- g. Summary arguments by the Second Party.
- h. The members of the Hearing Committee shall have the authority to direct any further questions to either or both 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. The Chair of the Hearing Committee shall notify the Parties in writing of the scheduling of additional meetings, 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.

i. 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.409.5).

K.409.4 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 Party 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 Party calling a witness shall first establish the relevance of the testimony of the witness.

c. Material introduced by either Party 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 Party 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 Party making the objection shall state the reason(s) for the objection, and the other Party 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.409.5 Recommendation of the Hearing Committee *(last revised December 6, 2019)*

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 solely to determine whether this Action is unfair, unreasonable, arbitrary, and/or capricious, but not to substitute its judgment regarding the substantive merits of the Grievable Action.

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, as well as that of the majority.

d. The written Recommendation from the Hearing Committee 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 three (3) working days after receiving the Recommendation from the Hearing Committee, the UGO shall send a copy of this Recommendation to the Parties. Within this same time frame, the UGO shall provide copies of the Recommendation, 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 Party 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 shall instead 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.

K.10.6 Appeals and Administrative Reviews

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 five (5) working days of receipt of the written Recommendation from the Hearing Committee, it must provide reasons for the appeal, and it must not exceed five (5) pages with normal font size. This appeal shall be submitted to the Provost, unless the Provost and/or the President is a Party to the Grievance. If the Provost is a 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, the Grievant 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 *(last revised December 6, 2019)*

If the Hearing Record is sent to the Provost, the Provost shall review the Hearing Record, together with any appeal from the Grievant (hereinafter referred to collectively as the "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 Appeal Record. No 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 may differ from the Recommendation from the Hearing Committee only if the Provost finds that the Recommendation from the Hearing Committee is unfair, unreasonable, arbitrary, and/or capricious.

The Provost shall also send a copy of the Provost's recommendation to the UGO, and the UGO shall send copies of this recommendation to the Grievant and the Supervisor. The Provost shall send the Provost's recommendation to the President and the UGO within 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.

K.10-6.3 Appeal of the Recommendation From the Provost *(last revised December 6, 2019)*

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 five (5) pages with normal font size.

If the Grievant submits an appeal to the President, the Grievant 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 *(last revised December 6, 2019)*

If the Hearing Record is sent to the President, the President shall review the Hearing Record, together with any recommendation from the Provost, 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. No 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 may differ from the Recommendation from the Hearing Committee only if the President finds that the Recommendation from the Hearing Committee is unfair, unreasonable, arbitrary, and/or capricious. The President shall send the President's written decision to the UGO within 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 decision of the President is final.

If the decision of the President includes taking action as a result of the Grievance, the President shall notify the appropriate 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 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. Board Policy 123 contains the procedures to be followed regarding this review.

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 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.

K.11 Grievance Panels and Hearing Committees

K.11.1 Grievance Panels (*last revised August 10, 2018*)

The Faculty Grievance Panel shall be a pool of eligible Hearing Committee members consisting of one (1) tenured faculty member from each academic department and one (1) tenured faculty member from the Libraries.

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. 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 either Grievance Panel.

K.11.1.1 Duties *(last revised August 10, 2018)*

As specified elsewhere in 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 the procedures outlined in Section K and the activities of the UGO.

K.11.1.2 Chairs *(last revised August 10, 2018)*

Each year, the Chair of the Faculty Council shall select a Chair for the Faculty Grievance Panel from among 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.

As specified elsewhere in this Section K, the duties of the chairs are:

- a. To meet with the UGO as needed to review activities of the UGO,
- b. To review challenges to the qualification of grievances by the UGO (Section K.3.3),
- 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.12.7),
- e. To advise the UGO on policy and procedural matters covered in Section K,
- f. To advise the Faculty Council and Administrative Professional Council on matters pertaining to rights and responsibilities described in this Section,
- g. To provide input for the UGO's annual report (Section K.12.4.i),
- 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. This shall include administrators at the level of department head or above, but not assistant or associate department heads. 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

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 tenured, tenure-track, contract, continuing, 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. Vacancies shall be filled by elections at other times throughout the year following the procedures set forth above.

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). Hearing Committees shall consist of five (5) members having the same Employee Classification as the Grievant. The UGO shall provide each selected member of the Hearing Committee the opportunity to excuse themselves from service because of having an involvement with one or both of the Parties and/or with the Action being challenged that causes the Hearing Committee member 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.

In the event that it is impossible to establish a full Hearing Committee from the membership of the Grievance Panel, 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.409.1.

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 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 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 administratively 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 reappointment. 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 10, 2018)*

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 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 have a twelve (12)-month appointment as a tenured faculty member. The appointment fraction as UGO and associated funds shall be negotiated between the UGO and the Provost and will depend on the workload as UGO. The fraction of the workload as UGO shall be considered to be service in the overall workload distribution of the UGO. Typically, this will lead to a compensating reduction in the workload within the home department of the UGO. 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 December 6, 2019)*

The UGO shall be responsible for:

a. Maintaining a record of actions taken as part of the processes in Section K and Sections E.11, E.15, E.16, and E.17.

b. Coordinating and facilitating the activities of the Grievance Panel by maintaining the records of the Panels, scheduling all meetings of the Panels for informational and organizational purposes, scheduling meetings of its Hearing Committees, calling individuals to appear before 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 Sections E.11, E.15, E.16, and E.17 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 Sections E.11, E.15, E.16 and E.17.
- 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.gh.
- f. Making recommendations to Hearing Committees and Appeal Committees regarding guidelines for the operation of these committees pursuant to Section K and Sections E.11, E.15, E.16, and E.17.
- 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.409.
- h. Facilitating the conduct of Hearings and Appeals pursuant to Section K and Sections E.11, E.15, E.16, and E.17.
- i. Preparing an annual report each 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.~~
- lj. Coordinating orientation and training of ~~University Mediators~~ and Grievance Panel members.
- ~~m~~k. Assisting the Faculty Council and the Administrative Professional Council in their annual evaluations of the UGO.

K.12.5 Right to Extend Deadlines

At the UGO's discretion, the UGO may extend any deadlines or timelines described in Section K and Sections E.11, E.15, E.16, and E.17. An individual 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.

K.12.6 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, the UGO 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 final.

K.12.7 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 President, after consultation with the chairs of the Grievance Panels 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 the Temporary Special UGO 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 individual 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 who previously held such an appointment. The UM shall have no administrative duties (see Section K.11.2) throughout the term of service.~~

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, a person who previously held such an appointment.~~

K.13.2 Selection, Terms, and Evaluation of University Mediators for Faculty (last revised August 10, 2018)

~~The Chair of Faculty Council and the Provost shall solicit nominations for faculty UMs prior to the end of each academic year. In consultation with the Executive Committee of Faculty Council, 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 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 department head may choose to provide an adjustment in effort distribution and/or workload. In this case, individuals appointed as faculty UMs may negotiate this change in effort distribution and/or workload with their department head, to reflect their involvement in the 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. 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 reappointment of the UM. 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 10, 2018)*

The Chair of the Administrative Professional Council and the Vice President for University Operations shall solicit nominations for administrative professional UMs prior to the end of each academic year. In consultation with the Executive Committee of the Administrative Professional Council, 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 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 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 UM who has mediated one or more cases during the calendar year shall be evaluated 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 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.

¹ The term "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 the individual's supervisors.

Rationale:

Long ago, an employee would initiate the Section K process to challenge an action by their Supervisor by submitting a formal written Complaint to the University Grievance Officer (UGO). This Complaint would specify how the Supervisor had been unfair, unreasonable, arbitrary, capricious, and/or discriminatory (the word “discriminatory” was later removed from this list when it was decided that acts of discrimination were under the purview of the Office of Equal Opportunity, rather than the Section K process). The Supervisor would then provide a written Response to this Complaint.

The next step would be to hire a University Mediator (UM), who would try to resolve the conflict without the need for a formal Hearing. The UM’s were not trained mediators – they were faculty members and administrative professionals who had volunteered to serve as UM’s for supplemental pay. If the UM was unable to resolve the conflict, then the employee could choose to proceed to a formal Hearing.

This process was not ideal. In particular, the submission of the formal Complaint that stated that the Supervisor was unfair, unreasonable, arbitrary, capricious, and/or discriminatory often exacerbated the conflict and made mediation more difficult. As a result, the UGO would often attempt to mediate the conflict informally before having the formal Complaint submitted. Over time, this informal approach expanded, and it often involved other administrators and/or persons in Human Resources, the Office of Equal Opportunity, and the Office of General Counsel. Later, the university created the Office of the Ombuds, which had trained mediators, and these persons could also help with the attempt at informal mediation. Eventually, the Manual was revised to include this informal process, which was called “conciliation,” since the term “mediation” was used for the formal mediation process. This terminology has often led to confusion, since people think of conciliation as mediation.

Over time, conciliation proved to be much more effective than formal mediation at resolving conflicts. However, when conciliation fails to resolve the conflict, the next step is still formal mediation. However, for at least a decade, there has not been a case where conciliation has failed to resolve a conflict, but formal mediation has led to a successful resolution. Formal mediation has instead become an expensive and time-consuming delay in the Section K process. When conciliation fails, the formal Complaint is submitted, which just aggravates the situation. However, the employee cannot move on to a formal Hearing until the formal mediation process has been completed unsuccessfully.

The proposed changes eliminate this unsuccessful mediation process, but retain the much more successful conciliation process. It also renames “conciliation” as “mediation,” since that term no longer has another meaning.

In addition, minor changes have been made to correct errors and clean up language.