

FACULTY SENATE GOVERNANCE COMMITTEE

Resolution on the Proposed Changes to the Grievance Procedure for Faculty

WHEREAS the administration and faculty of SIUC recognize that each member of the institution has the right to a hearing and appeal for redress of grievances; and

WHEREAS the purpose of the Judicial Review Board (JRB) is to assist the administration and faculty in resolving grievances; and

WHEREAS faculty members and administrators have concerns regarding the effectiveness, policies, and procedures of the JRB; and

WHEREAS past and current JRB members feel their efforts toward resolving grievances often are discounted by the Administration;

THEREFORE BE IT RESOLVED that to enhance the effectiveness of the JRB the Faculty Senate recommends for approval the attached changes to Section VIII of the Grievance Procedure for Faculty.

FS0623

VIII. The Judicial Review Board

- A. Purpose: The Judicial Review Board exists to assist the faculty and the administration in resolving grievances and charges of unethical conduct.
- B. Duties of the Judicial Review Board
1. The JRB shall have the authority to supervise the procedure of the grievance process.
 2. The JRB shall consider all grievances appealed to it over which it has jurisdiction, namely
 - a. appeals from administrative decisions relating to such matters as tenure, promotion, assignment of duties, and other conditions of employment of individual faculty members which have gone through administrative channels as outlined on the chart, "Grievance Process Channels" (Appendix B);
 - b. charges of unethical conduct as defined by the "Code of Ethics" (see Section II.B.);
 - c. charges of improper hiring procedures which violate the "Affirmative Action/Equal Opportunity Hiring Procedures," provided the faculty member was an applicant (or potential applicant) and the violation adversely affected the faculty member's chance to be hired.
 3. When other university policies and procedures specify procedures and channels of appeal to be followed in considering matters that might affect a faculty member's tenure, promotion, assignment of duties, or other conditions of employment, the JRB shall exercise jurisdiction in a manner consistent with these procedures and channels of appeal. The other university policies and procedures shall include, but be not limited to
 - a. the policy on Research Misconduct;
 - b. the policy on Sexual Harassment;
 - c. the Affirmative Action/Equal Opportunity Hiring Procedures.
- C. Procedures for the JRB
1. The JRB shall hold an organizational meeting each January or within two months after the Faculty Senate conducts its JRB elections. ~~At this meeting, JRB members shall elect from their number a chair and a vice chair. The chair and vice chair shall be appointed to serve by a joint meeting of the Executive Committee and the Committee on Committees upon approval of the faculty Senate.~~ The chair of the JRB shall not serve on JRB panels. Chair and vice chair may be reappointed by the Senate for a second year. The term of office for the chair and vice chair shall be one year, but a JRB member may be re-elected as chair or vice chair.
 2. The JRB shall review the Chancellor's responses to its recent recommendations. To ensure continuity, continuing JRB members shall review policies and procedures with incoming members.
 3. Upon written request of either party to a grievance, the JRB shall review, interpret, and enforce the grievance and appeals procedures of this document. For example, procedural matters which may be brought to the JRB include, but are not limited to, a) proper methods of filing a grievance, b) meeting of deadlines.
 - a. In an appeal to the JRB, the chair of the JRB may rule on the procedural issue personally or may refer it to the entire JRB. However, any ruling on procedure by the chair may be appealed to the JRB.
 4. Upon receipt of the written request for a procedural ruling the chair of the JRB may review the case to determine whether procedural requirements of this document

(Sections II and III) have been met, or may refer the matter to the JRB. If the chair determines that the procedural requirements have not been met, the chair shall rule on the matter and that decision, together with the basis for the decision, shall be communicated to both parties in writing.

5. If the chair has ruled, and either party disagrees with the ruling, the matter shall be referred to the JRB. The JRB shall be the final arbiter on matters of procedure.

D. Procedures of the JRB Panels □ The JRB's position in the appellate process is indicated in the chart, "Grievance Process Channels," attached as Appendix B.

1. Upon receipt of a request that necessitates review by a JRB panel, a JRB panel shall be formed. A JRB panel shall consist of five members, all chosen at random from among the JRB. One member shall serve as chair of the panel. ~~three members. Each party to the grievance shall name a member of the panel who shall be a tenured full professor of a university department (or equivalent, such as school or division) not associated with either party to the grievance and not a member of the JRB (if a party to the grievance is in an administrative post, this exclusion shall apply to the unit or equivalent in which he/she holds tenure), except that when a party to the grievance is a member of the administrative/professional staff, a civil service employee, or a student, that party shall have the right to name a panel member of like affiliation, but not from the same unit. The JRB shall name one member of the JRB to the panel who shall not represent a university unit associated with either party of the grievance, and who shall serve as a chair of the panel. Such chair shall instruct the panel in the procedures of JRB hearings and in the history of the particular grievance to that point. Each principal shall be entitled to one peremptory challenge in addition to challenges for cause. The validity of the challenge shall be determined by the JRB. Challenges for cause shall be strictly construed against the challenger and shall only be granted in cases of evidence of actual bias against the challenger or evidence of actual pre-disposition regarding the particular grievance. In the event of a second challenge for cause from the same party, the JRB shall meet with the parties to the grievance and identify a panel. In this case, the JRB can form the panel without agreement.~~

2. Grievant and respondent will be notified by the JRB chair of the appointment date and names of the panel members by certified U.S. mail return receipt requested. Either the grievant or respondent may challenge a panel member because of conflict of interest. The challenge must specify in detail the perceived conflict. A ruling by the other 4 panel members will be made as to whether the challenge is valid. The Board must receive any challenge within 10 working days of the receipt of such notice.

~~A challenge should be sent to the JRB chair by certified mail, return receipt requested, or hand delivered with signed and dated receipt. The challenge must state 1) which panel member is challenged, 2) whether the challenge of that panel member is peremptory or for cause (only one peremptory challenge is allowed). If the challenge is for cause, the challenge must 3) specify in detail the cause so that a ruling can be made as to whether the challenge is valid.~~

~~The JRB will treat the 15 working days within which hearings must begin as commencing when the period for challenging panel members has expired. Where panel members are challenged, the 15 working day period will not begin to run until the challenge has been dismissed or a panel is in place.~~

3. A hearing shall be mandatory in a grievance of denial or loss of tenure. In any grievances in which the issues are unclear without finding of fact, a panel shall be formed and a hearing held. The cause of a grievance or charge of unethical conduct must relate directly to the duties and status of a university employee, and shall not be a trivial or an entirely private matter. The JRB may decline to form a panel on any matter until all procedural requirements have been met.
4. If the JRB recommends a hearing, the administrator whose decision is being appealed or the respondent shall have the right to submit to the JRB a request that the appeal or charge be dismissed as failing to meet the above criteria, and that there are, therefore, insufficient grounds for proceeding to a hearing of the evidence. The grievant may reply with an argument as to why the appeal or charge should stand as written, or may elect to clarify the appeal or complaint. If the JRB decides that the appeal or charge is not actionable, it shall dismiss the appeal or charge.
5. The administrator defending the action or omission ~~which~~ that is the subject of the grievance shall be that administrator who made the first negative decision which the grievant is grieving.
6. JRB panel hearings shall be recorded on audio tape.
7. The JRB panel shall hold hearings as promptly as possible, but shall begin no later than 15 working days after receipt of the appeal or charge, unless the panel extends this deadline for good cause shown, and shall report as promptly as possible, but not later than 15 working days after the conclusion of the hearing. In the absence of extraordinary circumstances, neither the JRB nor the JRB panel shall extend a deadline if the extension will thereby prevent the JRB panel from reporting on a promotion or tenure grievance by May 1.
8. The principal parties appearing before the JRB panel shall each have the right to be accompanied by personal General Counsel or other adviser. The advisers will be permitted to advise their clients in the hearing and, with consent of the JRB panel, speak on their behalf.
9. The JRB panel shall require of both the grievant and the respondent a list of witnesses to be called and a copy of any documents that may be introduced into evidence or which may contain evidence that may be introduced by witnesses or which are the basis for professional judgments that may be asserted during the hearing. The JRB panel shall make the information available to all parties.
10. ~~Hearings shall be open unless the JRB panel, upon request of any of the parties, decides a hearing should be closed. If the hearing is closed, only the members of the JRB panel, the principal parties, and their advisers shall be admitted to the hearing, and witnesses for either party shall be present only while they are giving testimony.~~
11. The principal parties and their representatives shall be permitted to see and hear all evidence, to cross-examine any person giving evidence, and to present their own relevant evidence and arguments. To expedite the hearing process, presentation of arguments -- based on previously submitted evidence by grievant and respondent -- shall be limited to one hour each, with an additional hour available for cross examination and questions from the JRB panel. Additional time may be allowed with the consent of the panel.
12. Although the JRB panel may question principals and witnesses, no public statements shall be made by the members of the panel before or during the hearings, or before or during deliberation.
13. In the absence of compelling circumstances the chair, within 15 working days of the close of the hearings, shall send the JRB panel's report to the chancellor, the

grievant, the respondent, and the JRB. This report shall contain a specific recommendation of relief or no relief. In the event of undue delay on the part of the JRB panel, all materials pertaining to the grievance shall be returned to the JRB, which shall review the case and submit a report within 10 working days.

14. After the completion of the JRB panel's action, all documents or copies thereof and tape recordings shall be deposited for safekeeping in the chancellor's office with access to be made available to the principal parties or their designated representatives in case of appeal.
15. The chancellor shall make a decision based on the JRB's report, supporting documents, and in cases where the chancellor chooses to review the testimony, the tape recording of the hearing. Unless both parties are present, the chancellor shall not entertain any new information. The chancellor shall refrain from consulting with either party to the grievance prior to making a decision on the JRB's recommendation. A 4-1 vote or better by the JRB panel, either for or against the grievant, shall be considered binding.
16. The JRB chair shall present a written report to the Faculty Senate annually. The report shall include such information as a) the membership of the JRB; b) the number of cases referred to the JRB; c) the number of cases resolved and/or withdrawn; and d) other matters the JRB members deem relevant. No specific faculty cases shall be directly mentioned in the report. The report shall meet with the approval of a majority of the JRB members.

E. Procedure for Selection of the JRB

1. ~~There shall be 12 members of the JRB serving staggered 2-year 3-year terms. The colleges shall nominate and the Faculty Senate shall elect persons to serve on the JRB. The Faculty Senate shall adopt a formula under which the number of nominees from each college will be roughly proportional to the number of that college's tenured full professors eligible to serve on the JRB. The colleges will nominate potential members equal to the number of senators from the college. From these nominations, a slate of potential new JRB members will be determined by a joint meeting of the Executive Committee and the Committee on Committees, to be chaired by the Senate President, after a thorough vetting process to include but not be limited to the following criteria: nominees must be full professors who are not presently serving in an administrative position with supervisory responsibility over faculty performance, such as deans or department chairs- nor have served as an administrator during the past 3 years, have no current grievance or have filed a grievance within the past 3 years, and be willing to serve a 3 year term. Nominees shall reflect the diversity of colleges on campus. The faculty Senate must approve each nominee on the slate by vote.~~

2. No one may be named without giving consent. No one should give consent who is unwilling to serve, if necessary, during the summer months and when the university is not in session.
3. ~~The Faculty Senate shall elect only those faculty members who are tenured full professors and not presently serving in administrative positions with supervisory responsibility over faculty performance, such as deans or department chairs.~~
4. Released time for members of the JRB equivalent to one three-hour course each semester of service is strongly suggested.
5. ~~JRB membership shall be for three years. Members are eligible for appointment to no more than two consecutive 3-year terms. but JRB membership shall not~~

~~disqualify an otherwise eligible full professor from service on a JRB panel the succeeding year.~~

6. Members whose terms expire while they are serving on panels are expected to continue to serve until the business of the panel is finished.
 7. Appointments shall be made at the end of the fall semester each year. A term shall begin one week after appointment.
 8. Vacancies shall be filled by the same method as original appointment, i.e., being named by a joint meeting of the Executive Committee and the Committee on Committees, and approved by Faculty Senate.
 9. It is the responsibility of the member to indicate inability to serve on the JRB.
- F. General Counsel: When deemed necessary by the JRB chair and the president of the Faculty Senate, independent general counsel shall be provided to render technical legal advice to the chair of the JRB. Fees for such legal advice shall be paid from the Faculty Senate budget.

IX. Amendment This document may be amended by the normal procedures for amending university regulations as specified in Board of Trustees V *Bylaws*.