

### **Recording and Preserving Evidence in Faculty Grievance Cases**

When a faculty grievance decision is appealed from a constituent institution to the Board of Governors, the case frequently is referred first to this committee. We are responsible for reviewing the matter and making a recommendation to the full board. Questions have arisen about the type of evidentiary record required by this committee and by the Board of Governors as the basis for our review on appeal. We have addressed such questions in the past, on a case-by-case basis, but we previously have not issued any general interpretive guidelines on this subject. We believe that it would be helpful now to issue such guidelines to the constituent institutions.

First responsibility for resolving a faculty member's employment grievance rests with the established campus grievance process, which may include the opportunity for a formal hearing before a duly constituted faculty committee. Such faculty committees are responsible for receiving relevant evidence, making findings of fact, and providing advice to responsible administrators about how the controversy should be resolved. The chancellor has final administrative responsibility for resolving the grievance, with the assistance of the faculty committee. The chancellor's decision may be appealed to higher authorities, under the provisions of Section 501C(4) of *The Code*.

Both the chancellor, in making his disposition of the merits of such a case, and the University governing boards, in responding to requests for appellate review, must have access to a complete record of the evidence received at the hearing.

While the conclusions and recommendations of the faculty committee are entitled to great deference, the chancellor is responsible for determining whether the available evidence in fact supports the disposition of the case that has been advised by the faculty committee. Similarly, both the Board of Trustees and the Board of Governors, when considering an appeal from a chancellor's decision, must determine whether the available evidence supports the chancellor's decision.

It is essential that all testimony received by a faculty committee be preserved in a form that will permit its later review both by the parties to the grievance proceeding and by the administrative officials and governing boards that may be required to consider the case. In a number of instances in the past, it has been necessary for this committee to remand cases to a chancellor or to a faculty committee, because a complete record of the evidence had not been created or had not been preserved, thereby making it impossible for the Board of Governors to perform the appellate function contemplated by Section 501C(4) of *The Code*.

The simplest and least expensive method of preserving testimony is to use reliable recording equipment, from which a written transcript may be derived if necessary. Any such recording or transcription, of course, is a part of the grievance inquiry and must be treated with appropriate confidentiality. Only the immediate parties to the controversy, the responsible administrators, and the members of the University governing boards and their respective committees should be permitted access to such materials.

This requirement that evidence be preserved pertains only to formal hearing process that may be invoked by a faculty member. When the parties use instead a mediation process, that does not involve formal hearings, findings and conclusions, no such record of testimony is either necessary or appropriate. It is only when the parties find it necessary to seek formal resolution of a dispute, through an adversarial hearing process that results in a ruling by the chancellor, that these concerns about proper composition and preservation of the evidentiary record become pertinent.

***(Effective January 1, 2004, this policy will be repealed.)***