

### **Guidelines for Interpreting Section 607 of *The Code***

In connection with its recent consideration of an appeal from the campus disposition of a faculty member's grievance, the Board of Governors concluded that errors in interpreting and implementing Section 607 had occurred. Because the identified problems apparently were attributable, in part, to shortcomings in the guidance provided by Section 607, the board speculated that similar deficiencies in the operation of grievance procedures may exist at other campuses. Accordingly, in its decision the board provided clarification of the intended purposes of Section 607.

Section 607 provides in relevant part:

1. The chancellor of each constituent institution shall provide for the establishment of a faculty grievance committee. \* \* \*
2. The committee shall be authorized to hear, mediate and advise with respect to the adjustment of grievances of members of the faculty. The power of the committee shall be solely to hear representations by the persons directly involved in a grievance, to mediate voluntary adjustment by the parties and to advise adjustment by the administration when appropriate. \* \* \*
3. "Grievances" within the province of the committee's power shall include matters directly related to a faculty member's employment status and institutional relationships within the constituent institution. However, no grievance that grows out of or involves matters related to a formal proceeding for the suspension, discharge or termination of a faculty member, or that is within the jurisdiction of another standing faculty committee, may be considered by the committee.
4. If any faculty member feels that he has a grievance, he may petition the faculty grievance committee for redress. The petition shall be written and shall set forth in detail the nature of the grievance and against whom the grievance is directed. It shall contain any information that the petitioner considers pertinent to his case. The committee shall decide whether the facts merit a detailed investigation so that submission of a petition shall not result automatically in an investigation or detailed consideration of the petition.

At most constituent campuses, the definition of "grievances" within the purview of Section 607 excludes (in addition to disciplinary cases) challenges to nonreappointment decisions. Thus, the range of concerns properly brought before such a committee includes promotion in rank, compensation, and assignments of professional responsibility.

The board determined that, in responding to a grievant's petition, the options available to a faculty grievance committee under Section 607 are the following:

1. Mediation

Upon receipt of a petition, the committee first may offer its services as mediator if the matter in dispute is within the jurisdiction of the committee, if the dispute apparently is amenable to such an approach, and if the parties to the dispute express their willingness to cooperate with such an effort. Neither party is obliged to engage in mediation; it is a consensual undertaking. As mediator, the committee's role is limited to efforts at facilitating communication between the parties and encouraging the discovery of a mutually agreeable basis for voluntary resolution of the dispute. Mediation does not entail evidentiary hearings, findings of fact, or recommendations to responsible administrators for resolving the dispute. When mediation succeeds the grievance is withdrawn and the parties may implement the solution they have achieved.

Because the roles of mediator and adjudicator differ so materially, it is not practicable for the same persons to attempt to function in both capacities. Thus, when performing its mediation role a faculty grievance committee should designate one or more of its members to serve as

mediator, while insuring that a quorum of the committee membership is reserved to function as a hearing body in the event mediation does not succeed.

2. Dismissal of the petition

If mediation is not deemed appropriate to the case or if it fails to produce a voluntary resolution, the faculty grievance committee must decide whether a hearing should be held in response to the petition. Section 607 states that submission of a grievance petition "shall not result automatically" in a hearing. The committee is to consider the content of the grievant's petition, which sets forth the nature of the grievance, the identity of the respondent, and any other information the grievant considers pertinent to the matter. Assuming the truth of the information contained in the petition, the committee is to determine whether the contentions advanced by the grievant justify a hearing. A petition properly is dismissed if the grievant fails to allege a remediable injury attributable to the alleged violation of a right or privilege based on federal or state law, university policies or regulations, or commonly shared understandings within the academic community about the rights, privileges and responsibilities attending university employment. Dismissal is required if the petition addresses a problem that is not within the committee's jurisdiction (a disciplinary issue or a matter that is the responsibility of another committee, e.g., nonreappointment).

3. Hearing

If the petitioner has presented an apparently substantial issue within the purview of the committee's responsibility, an evidentiary hearing is to be held. In such an adversarial proceeding, attended by the grievant and the respondent, the faculty member is to present evidence in support of his contentions and the person charged with wrongdoing is to be given an opportunity to respond. The committee is to maintain a complete transcript of all evidence received. The evidence so compiled is to form the basis for committee conclusions about the case and any resulting advice to the responsible administrator. The burden is on the grievant to establish by a preponderance of the evidence that his contentions have merit.

[This is a rewrite of Administrative Memorandum #328.]

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