

APPEALS AND GRIEVANCE HEARING TASK FORCE REPORT

Note: At its meeting of August 18, 1998, the Faculty Senate referred the Task Force's Report to the Faculty Affairs Committee of the Faculty Senate. Faculty are encouraged to communicate their reflections and suggestions to the FAC, which aims to bring its own proposal to the Faculty Senate for action on November 10, 1998. There are two convenient ways for faculty to make their views known.

- Any faculty member can send comments to any member(s) of the FAC itself.
- Faculty may also post their suggestions and questions on the faculty discussion board that has been established for this purpose. doing this lets us all hear what other folks are thinking and enables us to comment on each other's suggestions and questions. Periodically members of the Task Force will review what has been said and offer any clarifications they think may be helpful. As the FAC itself begins its own deliberations on the issues, it will pay close attention to the discussion that develops on the message board.

TASK FORCE TO REVIEW

APPEAL AND GRIEVANCE PROCEDURES

at

Kansas State University

**REPORT PRESENTED TO THE PRESIDENT OF THE FACULTY SENATE AND THE
PROVOST**

May 15, 1998

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Introduction

Kansas State University has a history of shared governance for protection of faculty rights and the productive exercise of faculty freedoms in fulfilling the mission of the institution. To achieve this shared governance, Faculty Senate, with concurrence of the administration, has established procedures that are set forth in the Faculty Handbook. These procedures define responsibilities and relationships between institutional components, the administration and the faculty, so as to guarantee due process and protect academic freedom. Because conflicts may arise in the administration of these procedures, the Executive Committee of Faculty Senate has provided for peer review of grievances resulting from decisions concerning reappointment, tenure, dismissal, promotion, salary, working conditions, discrimination, or any other matters related to the employment of the faculty member.

The current appeal and grievance procedures are a result of major revisions by Faculty Senate in 1978 and 1988. Since 1988, a period of time when revisions to the procedures have been minimal, the grievance process has been tested in approximately one hearing per year. In the past two years, the numbers of grievance filings and hearings have increased, with three filed and two heard in 1996-97 and two filed and one heard in 1997-98. Along with additional numbers of filings and hearings, there has been an increase in the number of grievance-related cases heard and/or settled at a lower level. Between 1990 and 1997, the Faculty Grievance Ombudsperson reported approximately 30 faculty contacts per year. In 1994, the grievance procedures were amended to increase the number of ombudspersons from one to two. During the past year, the two ombudspersons reported 57 total faculty grievance-related contacts.

In November, 1997, in response to this increased activity which has placed great strain on administrative and faculty time and other resources, the President of Faculty Senate and the Provost appointed a Task Force to review appeal and grievance procedures. The Task Force consisted of ten administrators and faculty members whose names appear on the [cover page](#) of this report. In a letter announcing the formation of the Task Force and inviting individuals to serve, they wrote, "Many changes have occurred in terms of law, demographics, societal issues and general responsibilities of administrators and faculty since existing policy and procedures were written. We are asking that you review the policy and procedures in the Faculty Handbook regarding appeal and grievance. Matters of concern include continued assurance of due process, but also the time all parties incur, sequence of events, and hearing procedures." On December 4, 1997, the Task Force received its charge from the President of Faculty Senate and the Provost. After an organizational meeting on December 18, 1997, members of the Task Force met weekly during the Spring 1998 semester to define and explore concerns arising from past experiences. (See [Appendix A](#) for schedule.) As a result of extensive group discussions focusing on the elements of the charge to the Task Force, three subgroups were formed. Each of the three subgroups conducted a careful examination of the assigned area of responsibility including (1) effective ways to reduce the number of appeals and grievances (2) Faculty Handbook appeal and grievance-related revisions, and (3) hearing procedures. (See [Appendix B](#) for subgroup assignments.)

Data related to grievances filed since 1975 were reviewed and resource persons knowledgeable about faculty appeals and grievances were interviewed and surveyed. Among the resource persons interviewed were faculty who had served in the roles of ombudspersons, advocates, General Faculty Grievance Board chairs, and hearing panel participants. (See [Appendix C](#) for list of resource persons interviewed.) Surveyed faculty included those recently tenured and those in the mid-tenure process. Recommendations from the Task Force are presented as follows:

- [Effective Ways to Reduce Grievances](#)
- [Faculty Handbook Revisions Related to Appeal and Grievance Procedures](#)
- [Grievance Hearings](#)

The recommendations in this report are concerned primarily with issues of tenure and promotion because these have been the subject of most recent grievances. We acknowledge that other issues can lead to appeals and grievances. Therefore, we strongly urge that the central administration and Faculty Senate leadership continue the work begun in the Spring 1998 semester to impress upon college, department, and other unit administrators the need to be familiar with all policies and procedures set forth in the Faculty Handbook and to observe those procedures with scrupulous care.

Subgroup 1 Report

Recommendations for Effective Ways to Reduce the Number of Appeals and Grievances

Background:

A review of the data collected by the committee to examine the existing faculty grievance process included interviews with grievance committee chairs, faculty ombudspersons, and faculty advocates. Information on the number of grievances and the nature of the grievances over the past ten years was also provided. Since most of the grievances brought before the General Faculty Grievance Board were related to the denial of tenure, this subgroup focused primarily on the tenure process. During a meeting with the former and current ombudspersons it became clear that information regarding the role and availability of ombudspersons need to be communicated to the faculty.

This subgroup surveyed probationary track faculty and faculty who recently had been awarded tenure. Survey instruments are in [Appendix D](#). A copy of the compilation of the responses (raw data) is in [Appendix E](#). In all, 165 surveys were sent to probationary track faculty and 111 surveys were sent to recently tenured faculty. In each category, completed responses were submitted by 59% of the total number of faculty to whom the surveys were sent (116 responses from probationary faculty, 65 responses from recently tenured faculty). Below are some observations based on the results of the survey:

1. Probationary track faculty are not always made aware of the departmental criteria and standards for earning tenure.

Forty two percent of those responding indicated they were familiar with the department criteria and standards for promotion and tenure, 54% indicated they were somewhat familiar, and 4% indicated they were not familiar.

2. Probationary track faculty are sometimes given insufficient feedback regarding their progress toward earning tenure.

When asked how often feedback was provided, 5% indicated often, 73% indicated annually, 11% indicated mid-tenure review, and 11% indicated never.

3. Tenured faculty in many departments do not serve as mentors to probationary track faculty.

When asked to what degree senior faculty are involved in serving as a mentor to them, 31% indicated a "low degree".

4. Probationary track faculty are sometimes given responsibilities that are not consistent with the department's criteria for earning tenure.

Eleven percent indicated in their view it was not reasonable, given their assignment of responsibilities, to be expected to meet the department's criteria for earning tenure.

Recommendations:

Based on available information, the subgroup identified three key strategies that could significantly reduce the number of appeals and grievances. These strategies, which primarily address cases arising out of promotion and tenure decisions, are outlined below. To carry out the strategies in the first two recommendations, it may be necessary to reexamine and revise Sections C50.1 - C54 in the Faculty Handbook.

1. Improve the feedback and guidance given to tenure track faculty and to faculty who are intending to go up for promotion.

Departments and colleges need to make their expectations clear to the faculty member and to provide meaningful feedback and guidance during the probationary period. Some specific ideas in this regard are given below:

- A thorough mid-probationary review is essential in all departments. The survey indicates that 41% of recently tenured faculty found the mid-probationary review very useful, but 18% found it to be not useful. Thus, there is certainly room for improvement in this regard. At the conclusion of the mid-probationary review, the candidate must also be given an opportunity to include his/her response to the review as part of the completed file.
- Each department must have a clear and consistent basis for evaluation and feedback, especially in cases where there is a leadership change in the department during the evaluation period for tenure and promotion. The evaluation criteria for tenure must be clearly defined and explained to faculty members on probationary appointment; this is particularly important for qualitative and subjective criteria. Departments must refrain from using criteria that may be biased against certain candidates as a result of their race, religion, gender, national origin or other extraneous factors.
- The survey results indicate that many tenure track faculty feel that some degree of mentoring, formal or informal, would have been helpful to them. Formal mentoring provides a well defined structure, but it can introduce new problems. Nevertheless, all departments are strongly encouraged to explore avenues for mentoring to ensure that tenure track faculty receive adequate guidance toward earning tenure.
- Active faculty participation in the annual reappointment of probationary faculty is vital to the evaluation and feedback process. The annual evaluation should specifically address the issue of the faculty member's progress toward earning tenure.

If deficiencies are noted, the department must provide guidance to the candidate on how these deficiencies are to be rectified. Sections C50.1 through C54 in the Faculty Handbook should be revised in order to implement this recommendation. A draft of suggested modifications to these sections of the handbook is included as a recommendation by Subgroup Two in the next section of this report.

- The responsibilities assigned to a faculty member on a tenure track probationary appointment must be consistent with the departmental expectations for tenure. For example, if service responsibilities are not a major consideration for tenure, then the candidate should not have extensive service responsibilities.

2. Increase the accountability on the part of faculty and administrators who vote on promotion and tenure.

Under the current set of procedures, tenured faculty and administrators bear little accountability for their votes and decisions regarding promotion and tenure. In many cases, the underlying rationale is left unspecified. In the survey of recently tenured faculty, 36% never received any faculty comments or explanation of the rationale for promotion and tenure. Ten percent of the respondents did not receive a report of the votes. In such cases, it is difficult for the candidate and the concerned administrators to evaluate the merits of the decision. Permitting decision-making without an explanation of the rationale can lead to irresponsible voting and irresponsible decision-making at all levels. Several respondents to the survey also emphasized, in their written comments, the need to make the evaluation process more open and less mysterious to the candidate. Specific suggestions in this regard are given below:

- Individual written explanations should be encouraged with votes and decisions at all levels, including the departmental tenured faculty level.
- The explanations should address all aspects of the established promotion and tenure criteria of the department or college. They should also be based on an accurate and unbiased interpretation of the candidate's professional record. Evaluating units (departments, colleges, etc.) are encouraged to devise standard forms to facilitate consistency in this process.
- The results, rationale, and relevant background material associated with the votes at each step of the tenure decision should be made available to the candidate at appropriate times. This issue is discussed in more specific terms in the proposed modifications to Sections C113 through C155 of the Faculty Handbook presented in the next section of this report.

3. Improve communications so that faculty are more aware of the policies and procedures that are relevant to faculty employment processes and issue resolution specifically related to annual evaluation, reappointment, tenure, and promotion.

Some specific examples follow:

- Develop a brochure to define and describe the roles of the ombudsperson and faculty advocate and to describe the grievance procedures. See [Appendix F](#) for an example of a brochure describing the role of the ombudsperson for K-State Research and

Extension faculty.

- Provide the same information electronically at appropriate sites (Faculty Senate Website, Unclassified Affairs Website, KSU Information Directory on the KSU Homepage, etc.).
- Develop a pictogram or flowchart that clearly documents the complete appeals and grievance procedure within the University.
- Require hardcopies of current versions of the above documents and the Faculty Handbook to be available in each department's office.

Faculty Commentary on the Task Force's Recommendations for Effective Ways to Reduce the Number of Appeals and Grievances

Subgroup 2 Report

Recommendations for Faculty Handbook Revisions Related to Appeal and Grievance

Background:

Discussions among members of the Task Force indicated a need to explain the administrative appeal process more fully relative to reappointment, mid-tenure review, promotion and/or tenure; the role of the Office of Affirmative Action in the review of discrimination complaints; and the role of the Deans' Council in tenure and promotion decisions. After extensive discussion as a subgroup and input from the Task Force, Subgroup Two drafted proposed revisions to the Faculty Handbook which, if adopted, will clarify evaluation procedures used for reappointment and mid-tenure reviews; will define new roles for the Deans' Council and the Provost in tenure and promotion decisions and appeals; and will provide for mediation to facilitate resolution of complaints

Recommendations:

1. Define the role of the ombudsperson in appeals and add cross references to the ombudsperson in appropriate sections of the Faculty Handbook.

Ombudspersons play a pivotal, but little known role in the appeal process. Detailing the ombudsperson's role will facilitate effective use of the time and talents of the ombudspersons and resolution of complaints. Adding cross references will have an integrative effect, bringing seemingly disparate parts of the Faculty Handbook together.

2. Revise C53.1, C53.3, C92.2, C112.1, C112.3, C112.5, C113 to C115 and C152.5 to C155 in Section C and the Administrative Appeals Section of Appendix G in the Faculty Handbook.

Although current procedures for annual evaluation, reappointment, mid-tenure review, promotion, and tenure decisions provide guidance regarding the roles of the department heads, deans, Deans Council and Provost in these decisions, some language and procedural changes should help all parties understand and exercise their responsibilities and rights. Specific language and procedural changes follow.

- Revise C53.1 to add a provision for the tenured faculty to meet with the department head to discuss a candidate's eligibility for reappointment and progress toward tenure and to vote on the candidate's reappointment and progress toward tenure.
- Revise C53.3 to add a requirement for the department head to meet with the candidate to discuss progress toward tenure. Include a provision for the department head to send the candidate a copy of the department head's letter of recommendation regarding the candidate.
- Revise C92.2 to include a provision for the candidate to submit a response to the department head after the candidate receives a mid-tenure review.
- Revise Sections C112.1 and C112.3, to provide faculty access to outside reviews and to require faculty to meet to discuss candidates for tenure.
- Revise C112.5, C113 to C115 and C152.5 to C155 to allow candidates for tenure and/or promotion direct access to recommendations regarding their tenure and/or promotion and to propose new roles for the Deans Council and Provost in the tenure process and in the promotion process. Revision includes modifying C114.1 and C114.2 and adding C114.3 to C114.5 to account for the proposed new roles of the Deans' Council and the Provost.

The Faculty Senate on April 28, 1998 amended C153.1. In the proposed text on pages 8-15 of this report, that amendment is incorporated as underlined text; the amendment proposed by the Task Force is in italic type face. As amended by the Faculty Senate, the last sentence of C153.1 is not consistent with the revision proposed by the subgroup. To make the two versions consistent would require deletion on the last sentence of the Faculty Senate amendment.

- Revise the Administrative Appeals Section of Appendix G to add a provision for mediation between the faculty member and the appropriate administrator led by facilitator(s) mutually acceptable to the parties in appeal cases that do not involve denial of tenure and/or promotion.
- Revise the Administrative Appeals Section of Appendix G to include a provision that at any stage of the tenure and/or promotion process a faculty member may file a discrimination complaint with the Provost or the Office of Affirmative Action. The review of the complaint; however, will not occur until after the Deans Council has voted to deny tenure and/or promotion. This provision also requires the Provost to hold a mediation session. That session will be with the faculty member, the senior college dean of the Deans' Council and a tenured faculty mediator mutually acceptable to the Provost. If the mediation fails, the Provost will provide the faculty member written reasons for the decision.
- Revise the Administrative Appeals Section of Appendix G insert language affirming current practice that a faculty member may first attempt to mediate a complaint. However, if the faculty member does not choose mediation or if mediation fails, the faculty member may file a complaint with the dean, Provost or the Office of

Affirmative Action. Subsequently, an administrative review team will review the complaint, decide whether discrimination occurred and inform the faculty member. The faculty member may appeal the decision to the Provost. The Provost must hold a mediation session with the faculty member, the senior dean and a tenured faculty mediator mutually acceptable to the Provost and the faculty member. If mediation fails, the Provost will provide the faculty member written reasons for the decision.

Attached is the proposed text for each recommendation.

Faculty Handbook, Section C: Faculty Identity, Employment, Tenure

--Current Text--

C53.1 Departmental procedures. It is the responsibility of the department head to make the candidate's file available to the department eligible faculty members who are eligible to make recommendations. The department head is advised by the eligible faculty members of the department regarding the qualification of the candidate for reappointment. Any member of the eligible faculty may, prior to the submission of any recommendation to the department head, request that a candidate meet with the eligible faculty to discuss, for purposes of clarification, the record of accomplishment submitted by the candidate.

C53.3 The department head forwards a written recommendation and accompanying explanation to the dean, along with the candidate's complete file, and the majority recommendation and written comments (unedited) of the departmental faculty members.

C92.2 Procedures for the mid-probationary review are similar to procedures for the tenure review and are established by the departmental faculty in consultation with the department head and the dean. The department head is responsible for making the candidate's file available to the tenured faculty members in the department and is advised by them regarding the candidate's progress. Comments also may be solicited from students, from other faculty members and department heads in the college or University, and from outside reviewers. The department head discusses the review with the dean and then provides to the candidate a letter of assessment, including a summary of faculty comments and suggestions. The department head discusses the review and assessment with the candidate.

C112.1 Departmental procedures. The department head is advised by the tenured faculty members of the department regarding the qualifications of the candidate for tenure. Department heads are responsible for making the candidate's file available to tenured faculty members in the department in a timely manner.

C112.3 Ordinarily, eligible faculty members individually review the candidate's file, considering the department's criteria, standards, and guidelines for tenure, and then meet to discuss the candidate's petition. The recommendation(s) and written comments of the faculty members are forwarded to the department head.

--Proposed Text--

C53.1 Departmental procedures. It is the responsibility of the department head to make the candidate's file available to the department's tenured faculty members who are eligible to make recommendations. As part of this process, the department head and the tenured faculty will meet to discuss the candidate's eligibility for reappointment and progress toward tenure. Subsequent to this meeting there will be a ballot of tenured faculty. Any member of the tenured faculty may, prior to the submission of any recommendation to the department head, request that a candidate meet with the tenured faculty to discuss, for purposes of clarification, the record of accomplishment submitted by the candidate.

C53.3 The department head forwards a written recommendation and accompanying explanation to the dean, along with the candidate's complete file, and the majority recommendation and written comments (unedited) of the department's tenured faculty members. The department head will also meet with the candidate to discuss the candidate's progress toward tenure. The department head 's recommendation will be copied to the candidate.

C92.2 Procedures for the mid-probationary review are similar to procedures for the tenure review and are established by the departmental faculty in consultation with the department head and the dean. The department head is responsible for making the candidate's file available to the tenured faculty members in the department and is advised by them regarding the candidate's progress. Comments also may be solicited from students, from other faculty members and department heads in the college or University, and from outside reviewers. The department head discusses the review with the dean and then provides to the candidate a letter of assessment, including a summary of faculty comments and suggestions. The department head discusses the review and assessment with the candidate. After receiving the assessment, the candidate has the right to submit a written response for the file.

C112.1 Departmental procedures. The department head is advised by the tenured faculty members of the department regarding the qualifications of the candidate for tenure. Department heads are responsible for making the candidate's file available to tenured faculty members in the department in a timely manner. Any outside reviews that have been solicited by the department head should be made available to the department's tenured faculty.

[delete what is in brackets]

C112.3 [Ordinarily, e] Eligible tenured faculty members will individually review the candidate's file, considering the department's criteria, standards, and guidelines for tenure, and then will meet to discuss the candidate's petition. The recommendation(s) and written comments of the faculty members are forwarded to the department head.

--Current Text--

C112.5 The department head forwards a written recommendation to the dean, accompanied by an explanation of her or his judgement. The recommendation(s) and written comments (unedited) of the tenured faculty members and the candidate's complete file also are forwarded.

C113. Procedure for Tenure Evaluation

C113.1 College Procedures. Each college will have an advisory committee to advise the dean on candidates proposed for tenure and/or promotion.

C113.2 The operation, composition, and procedures for selection of committee members must be approved by the faculty, the dean and the provost.

C113.3 The dean, after consultation with the department head and college advisory committee and after discussing his or her recommendations with the head and the committee, submits his or her recommendation to the provost accompanied by the recommendations and written comments (unedited) of the department head and the departmental faculty, and written comments (unedited) of the college advisory committee.

C113.4 The dean will provide a written explanation of her or his recommendation that will be forwarded to the provost and shared with the department head.

C113.5 The faculty member being evaluated will be notified by the dean of his or her recommendation and the report of the college advisory committee.

--Proposed Text--

C112.5 The department head forwards a written recommendation to the dean, accompanied by an explanation of her or his judgement. The recommendation(s) and written comments (unedited) of the tenured faculty members and the candidate's complete file also are forwarded. The department head copies the recommendation to the candidate.

C113 Procedure for Tenure Evaluation

C113.1 College Procedures. Each college will have an advisory committee to advise the dean on candidates proposed for tenure and/or promotion.

C113.2 The faculty, the dean, the Deans Council and the Provost must approve the operation, composition, and procedures for selecting college advisory committee members. The operation, composition, and procedures for selection of the college advisory committee may be reviewed any year at the request of the faculty, dean or the Provost, and must be reviewed at least once every five years.

C113.3 The dean, after consulting with the department head and college advisory committee and after discussing his or her recommendations with the head and the committee, submits his or her recommendation to the Deans Council accompanied by the recommendations and written comments (unedited) of the department head and the departmental faculty, and written comments (unedited) of the college advisory committee. The dean's recommendation and the written comments of the college advisory committee will be copied to the department head and the candidate.

C113.4 Notification of to candidates. Candidates are informed of the colleges's recommendation prior to the time that the file and recommendations are forwarded to

the Deans Council. Candidates may withdraw from further consideration for tenure by submitting to the dean a written request for withdrawal. This must be done within seven days following notification of the college's recommendation. Withdrawal by a candidate who is in the final year of the probationary period may be done only by formal resignation.

C113.5 The dean will send the candidate's complete file to the Deans Council seven calendar days after the dean has informed the candidate of the dean's decision if the candidate does not withdraw.

--Current Text--

C113.6 The candidate's complete file is forwarded to the provost.

C113.7 The operation, composition, and procedures for selection of the college advisory committee may be reviewed any year at the request of the faculty, dean or the provost, and must be reviewed at least once every five years.

C114.1 University tenure procedures. Following consultation with the dean, the provost may forward a recommendation to grant tenure to the president. Decisions to deny tenure are not forwarded to the president. When the University recommendation disagrees with that of the dean, the provost provides a written explanation of her or his judgement to the dean.

C114.2 Final authority for granting tenure resides with the president

C115. Notification of Candidates. Candidates are informed of the colleges's recommendation prior to the time that the file and recommendations are forwarded to the provost. Candidates may withdraw from further consideration for tenure by submitted to the dean a written request for withdrawal. This must be done within seven days following notification of the college's recommendation. Withdrawal by a candidate who is in the final year of the probationary period may be done only by formal resignation. Candidates are notified of the University's action when the provost's recommendations to grant tenure are forwarded to the president.

--Proposed Text--

C114.1 University tenure evaluation procedures. The dean of the candidate's college will discuss with the Deans Council his or her recommendation, the candidate's complete file, the recommendations and written comments (unedited) of the department head and the departmental faculty, and written comments (unedited) of the college advisory committee. The dean of the candidate's college will abstain from voting when the Council votes on the candidate, and will notify the candidate and the candidate's department head of the Council's vote. The vote of the Deans Council is the finding of the academic community. This finding may only be overruled by the provost or the president. If the Provost overrules the Council, he or she must provide a written statement of the reasons for the decision.

C114.2 If the finding of the Deans Council is negative, the candidate may appeal this decision to the Provost, who has not previously been a party to any discussion of the

case. If the Provost's decision is negative, the candidate may start the grievance process.

C114.3 If the vote of the Deans Council is positive, then the case is reviewed by the Provost. If the Provost decides negatively then within a specified period, he must hold a mediation session with the candidate, the senior Dean, and a tenured faculty mediator mutually acceptable to the Provost and the candidate. If mediation fails then the Provost will provide the candidate, department head and dean of the candidate's college and the Deans Council written reasons for the decision. At that point, the candidate may file a grievance with the General Faculty Grievance Board.

C114.4 Following a final report to the Deans Council, the Provost may send a recommendation to the president to grant tenure. Decisions to deny tenure are not forwarded to the President. When the Provost's recommendation disagrees with that of the Deans Council, the Provost will provide a written explanation of her or his judgement to the Council, the dean, the department head and the candidate.

C114.5 The president has final authority for granting tenure.

Note: The text of C116.1 to C152.4 is unchanged.

--Current Text--

C152.5 The department head forward a written recommendation to the dean, an explanation of her or his judgement, and the recommendation and written comments (unedited) of the consulted faculty members. The candidate's complete file is forwarded to the dean.

C153 Procedures for Promotion Evaluation

C153.1 College procedures. Each college will have an advisory committee to advise the dean on candidates proposed for promotion and/or tenure.

--Proposed Text--

C152.5 The department head sends the dean the candidate's complete file, the written comments (unedited) of the tenured faculty members and the department head's written recommendation and an explanation of the recommendation. At the same time, the department head also sends the candidate a copy of the recommendation and explanation.

C153 Procedures for Promotion Evaluation

C153.1 College procedures. Each college will have an advisory committee to advise the dean on candidates proposed for promotion and/or tenure. Procedures for the selection of members of the advisory committee and the composition and operation of the committee must be approved by the faculty, dean, Deans Council and Provost. The advisory committee's specific charge is to assure that all applicable procedures have been followed and that the department/unit in arriving at a recommendation did so by fairly applying its established criteria, standards, and guidelines for tenure/promotion.

(See C30-38, C102, C141.) The committee, in advising the dean, will base its recommendations exclusively on a comparison of the candidate's credentials with the criteria, standards, and guidelines of the candidate's department. The committee will report their findings in writing to the Dean who will forward them unedited to the Provost. The committee's report must specifically contain a statement as to whether or not all applicable procedures were followed. In addition, in those cases where the committee's recommendation differs from that of the department/unit, the report must also explain the rationale behind the committee's recommendation by providing a detailed evaluation of the candidate's credentials with regard to how they meet or fail to meet the specific criteria, standards, and/or guidelines of the candidate's department/unit. A minority committee report is required when the committee's recommendation is not unanimous. A vote of the committee is not required but is allowable if approved under C153.2 [FSM 4/28/98]. The operation, composition, and procedures for selection of the college advisory committee may be reviewed any year at the request of the faculty, dean or the Provost, and must be reviewed at least once every five years.

--Current Text--

C153.2 The operation, composition, and procedures for selection of committee members must be approved by the faculty, the dean, and the provost.

C153.3 The dean, after consultation with the department head and college advisory committee and after discussing his or her recommendations with the head and the committee, submits his or her recommendations to the provost accompanied by the recommendations and written comments (unedited) of the department head and the departmental faculty, and written comments (unedited) of the college advisory committee.

C153.4 The dean will provide a written explanation of her or his recommendation that will be forwarded to the provost and shared with the department head.

C153.5 The faculty member being evaluated will be notified by the dean of his or her recommendation and the report of the college advisory committee.

C153.6 The candidate's complete file is forwarded to the provost.

C153.7 The operation, composition, and procedures for selection of the college advisory committee may be reviewed any year at the request of the faculty, dean, or the provost, and must be reviewed at least once every five years.

C154.1 University procedures. Following consultation with the dean, the provost may forward a recommendation to award promotion to the president. Recommendations to deny promotion are not forwarded to the president. When the University recommendation disagrees with that of the dean, the provost provides a written explanation of his or her judgement to the dean.

C154.2 Final authority for granting promotion resides with the president.

Note: The text of C156.1 and C156.2 remains the same.

--Proposed Text--

C153.2 The dean will consult with the department head and college advisory committee and discuss his or her recommendation with the department head and the committee, then:

a. submit his or her recommendation and the candidate's complete file to the Deans Council along with the recommendation and written comments (unedited) of the department head and the departmental faculty, and written comments (unedited) of the college advisory committee;

b. send a copy of her or his recommendation to the department head; and

c. notify the candidate of her or his recommendation and the college advisory committee's recommendation.

C153.3 The candidate, after receiving the dean's notification may withdraw from further consideration for promotion by submitting to the dean a written request for withdrawal. This must be within seven days following notification of the college's recommendation.

C153.4 The dean will send the candidate's complete file to the Deans Council, seven calendar days after the dean has informed the candidate of the dean's decision, if the candidate does not withdraw.

C154.1 University promotion evaluation procedures. The dean of the candidate's college will discuss with the Deans Council his or her recommendation, the candidate's complete file, the recommendations and written comments (unedited) of the department head and the departmental faculty, and written comments (unedited) of the college advisory committee. The dean of the candidate's college will abstain from voting when the Council votes on the candidate.

C154.2 If the vote of the Dean's Council is negative, the candidate may appeal this decision to the Provost, who has not previously been a part to any discussion of the case. If the Provost's decision is negative, the candidate may start the grievance process.

C154.3 If the vote of the Deans Council is positive, then the case is reviewed by the Provost. If the Provost decides negatively then within a specified period, he must hold a mediation session with the candidate, the senior Dean, and a tenured faculty mediator mutually acceptable to the Provost and the candidate. If mediation fails then the Provost will provide the candidate, department head and dean of the candidate's college and the Deans Council written reasons for the decision. At that point, the candidate may file a grievance with the General Faculty Grievance Board.

C154.4 Following a final review with the Deans Council of all cases, the Provost may send a recommendation to the president to grant promotion. Decisions to deny promotion are not forwarded to the President. When the Provost's recommendation disagrees with that of the Deans Council, the Provost will provide a written explanation of her or his judgement to the Council.

C154.5 The president has final authority for granting promotion.

C155 University notification to candidates. Candidates are notified of the University's action when the Provost's recommendations to grant promotion are forwarded to the President.

--Current Text--

C.. Administrative Appeals

Before filing a formal grievance, the faculty member shall have presented the complaint in writing to the administrator(s) whose sphere(s) of authority include(s) the circumstances which gave rise to the complaint. Within ten class days, the latter shall investigate and provide the faculty member with a written response.

--Proposed Text--

C. Administrative Appeals

1. A faculty member with a complaint of unfair treatment, or of an improper, capricious or arbitrary decision, shall first meet with the administrator(s) whose sphere of authority include(s) the circumstances which gave rise to the complaint. At that meeting, the parties are strongly encouraged to consider mediation. The type of mediation will be a moderated discussion between the faculty member and the administrator led by a facilitator or facilitators mutually agreed upon by the faculty member and the administrator. If the complaint is resolved, the parties shall, in good faith, comply with the provisions of the resolution.

If mediation fails, the faculty member shall present the complaint in writing to the next level administrator and request a reconsideration. Within ten class days, or a longer period mutually agreed by both parties, the administrator shall investigate and provide the faculty member with a written response.

If the parties do not choose mediation, the faculty member shall present the complaint in writing to the dean or Provost, as appropriate. Within ten class days, or a longer period mutually agreed by both parties, the dean or Provost shall provide the faculty member with a written response.

If the complaint is not resolved by the dean or Provost, the faculty member may file a grievance in writing with the General Faculty Grievance Board.

2. A faculty member with a discrimination complaint regarding tenure and/or promotion may file a written complaint with the Provost or the Office of Affirmative Action. The Provost will assign a dean to serve on an administrative review team with the Office of Affirmative Action to review the complaint.

No action will be taken on the complaint until after the Deans Council has denied tenure and/or promotion. At that point, the administrative review team will review the complaint, determine whether discrimination occurred and inform the Deans Council, Provost and the faculty member. If the determination goes against the candidate, the

candidate may appeal the determination to the Provost, if her or his complaint was against the department, college or the Deans Council. At that point, the Provost must hold a mediation session with the faculty member, the senior Dean and a tenure faculty mediator mutually acceptable to the Provost and the candidate. If mediation fails then the Provost will provide the candidate, department head and dean of the candidate's college and the Deans Council written reasons for the decision. The candidate may then file a grievance with the General Faculty Grievance Board.

3. A faculty member with a complaint that alleges discrimination in some aspect of employment other than tenure and/or promotion, may first attempt to mediate her or his complaint as described in paragraph 1, above. However, if the faculty member does not choose mediation or if mediation fails, the faculty member shall present the complaint in writing to the dean, Provost or the Office of Affirmative Action.

The Office of Affirmative Action together with the dean or a responsible administrator assigned by the dean or Provost become the administrative review team for the complaint. The administrative review team will determine whether discrimination occurred and inform the dean and the faculty member. The faculty member may appeal the determination to the Provost. At that point, the Provost must hold a mediation session with the faculty member, the senior dean and a tenure faculty mediator mutually acceptable to the Provost and the faculty member. If mediation fails then the Provost will provide the candidate, department head and dean of the candidate's college and the Deans Council written reasons for the decision. The faculty member may then file a grievance with the General Faculty Grievance Board.

<p>Faculty Commentary on the Task Force's Recommendations for Faculty Handbook Revisions Related to Appeal and Grievance</p>

Subgroup 3 Report Recommendations for the Grievance Hearing

Background:

Interviews with past and current chairs of the General Faculty Grievance Board (GFGB) and with chairs and members of recent grievance panels led us to conclude that the procedures in place are very sound and require no extensive reworking. However, there seemed to be a consensus that some revisions would be helpful. The three concerns to be addressed by these suggestions for revisions concern continuity, information, and time.

The regular turnover of the membership at the end of each year creates problems for chairs of GFGB and for chairs of the panel. It is highly desirable that experience accumulated over time be passed along to new generations. Ideally, the chair of either the GFGB or the panel will be a full professor who has had experience as a member of a panel; in reality, this has not been the case, in part because there have not been a very large number of grievances and because experienced persons depart from the Board at the end of their three-year terms. Another concern, which is related to the first, is access of panels to information concerning the cases they are hearing; in the absence of a statement of policy a chair and panel are uncertain as to what they may request to examine in order to assure a fair disposition of the case. Therefore, it is important to make clear what information is available to grievants and to the

panels. Finally, the duration of a hearing over a period of several weeks, as has happened in several recent cases, is highly undesirable, for this can create unnecessary strains upon both the participants and the panel.

Recommendations:

1. Assure continuity of policy and practices.

As several board and panel chairs proposed, create a three-person team consisting of the current chair of the GFGB, a former chair of GFGB, and an incoming chair. The current chair will continue to carry out the responsibilities now stated in the Faculty Handbook. However, in doing so, the chair will have formal access to advice from a former chair. Furthermore, incoming chairs will have been informed of the activities and policies of the GFGB in the recent past. However, it is necessary to recognize that because of the possible departure of experienced persons from the university to a new position or to retirement or because of a movement within the university to new responsibilities, this proposal may not be workable in the simple form stated here. It is, therefore, advisable that the Faculty Affairs Committee of Faculty Senate explore this proposal in greater depth.

2. Continue to permit use of lawyers by all parties.

Chairs and panel members agree unanimously on the value of having access to a lawyer appointed by the Board of Regents, from off-campus, to advise them in carrying out their responsibilities. The presence of lawyers representing grievant and administrator(s), as permitted in Section H5 of Appendix G, is a matter of great concern to panel members and to some administrators on this Task Force. However, the rights of citizens to counsel cannot be abrogated by a university; grievants can and will have counsel, even though they must do so at their own expense. Any attempt to remove lawyers from the process is futile.

3. Expand the size of the pool of the General Faculty Grievance Board.

As the current pool of thirty persons on the GFGB has proved to be inadequate in the past few years, it seems advisable to consider enlarging that pool and to inform those persons who agree to serve on GFGB that they are expected to serve on a panel when they are called to do so. It also seems advisable to consider reducing the number of alternate panel members from two to one. Informing heads and evaluation committees of the great importance of service on a grievance panel, including service as an alternate member of the panel, is necessary to insure that those who give their time will receive due recognition and reward for their work.

4. Provide access to information.

In order to assure that the panels have sufficient information to reach a fair disposition of the cases before them, it seems advisable to consider implementation of the following policies:

- Faculty members in the appeal and grievance process should have access to their own files, including unredacted letters, both internal and external.
- Faculty members should have access to general information about other faculty

members such as is normally contained in a curriculum vitae.

- The panel has a right to request the file of a faculty complainant and other relevant information pertaining to the department and/or college.

[For further information on these matters, see "Access to Faculty Personnel Files," AAUP: Policy Documents & Reports, 1995, pp. 39-45. See [Appendix G](#) {of this Report}.]

5. Assign responsibility for use of key terms.

Panels have been troubled by the lack of definition of such terms as "whimsical," "capricious," and "collegiality". Regarding these terms, it is incumbent upon persons who use them to demonstrate, with specific evidence, how the terms apply in the case.

6. Revise hearing procedures in Appendix G.

For the efficient conduct of the grievance hearing it seems desirable to consider implementing into the Faculty Handbook a version of the "Supplementary Procedural Rules," which has been used in recent grievances. A draft of the appropriate sections of Appendix G of the Faculty Handbook follow.

Faculty Handbook, Appendix G: General Faculty Grievance Board

--Current Text--

H.5.c The grievant shall (1) make an opening statement and (2) present evidence, which may include testimony by supporting witnesses, documents, and/or other relevant material. The administrator(s) may (1) cross-examine each witness following the testimony and (2) object to any testimony on grounds it is not relevant.

H.5.d The administrator(s) shall (1) make an opening statement and (2) present evidence, which may include testimony by supporting witnesses, documents, and/or other relevant material. The grievant may (1) cross-examine each witness following the testimony and (2) object to any testimony on grounds that it is not relevant.

H.5.e The grievant and the administrator(s), in that order, may present evidence in rebuttal after the presentations of both parties.

H.5.f Witnesses shall not be present at the hearing until called to testify and then shall be excused, unless either party or the GFGB requests that they remain available.

--Proposed Text--

H.5.c. The grievant and the administrator(s), in that order, will make opening statements of about 15 minutes in duration. The panel will then

have an opportunity to ask questions of the grievant and the administrator (s) in order to clarify issues before presentation of evidence and testimony of witnesses.

H.5.d. The grievant shall present evidence, which may include testimony by supporting witnesses, documents, and/or other relevant material. The administrator(s) may (1) cross-examine each witness following the testimony and (2) object to any testimony on grounds it is not relevant or is repetitive. Members of the panel will have the opportunity to ask questions of each witness after cross examination. The administrator(s) shall present evidence, which may include testimony by supporting witnesses, documents, and/or other relevant material. The grievant may (1) cross-examine each witness following the testimony and (2) object to any testimony on grounds it is not relevant or is repetitive. Members of the panel will have the opportunity to ask questions of each witness after cross-examination.

H.5.e. Witnesses shall not be present at the hearing until called to testify and then shall be excused, unless either party requests that they remain available. However, witnesses called by the grievant who are also persons against whom the grievance has been brought may be present prior to giving testimony. Witnesses who have been excused may remain in the audience at an open hearing.

H.5.f. The grievant and the administrator(s), in that order, may present evidence in rebuttal after the presentations of both parties.

7. Establish a two-day structure for the grievance hearing.

General Faculty Grievance Board chairs and with chairs and members of recent grievance panels have expressed strong opposition to the idea of imposing a time-limit upon grievances while also recognizing that there have been serious problems in this area. Therefore, the time issue must be addressed. In order to expedite hearings the grievance should, from the outset, be seen as a two-day event, with exceptions as warranted by the complexity of the case and determined by the panel. The GFGB chair should schedule the grievance hearing as a two-day event with no more than five class days intervening between these two days of hearings.

8. Modify instructions for the grievance panel report.

The panel report should be written as prescribed in Section I of Appendix G. Add instructions that any form of resolution recommended by the panel must be consistent with policies set forth elsewhere in the Faculty Handbook and that a minority report may be appended.

9. Define the role of the advocate.

The fact that the role of the advocate has come to assume greater importance in recent

grievances makes this an appropriate moment for defining the role and its potential responsibilities and for addressing questions concerning the privilege of confidentiality in the relation between grievant and advocate.

Faculty Commentary on the Task Force's Recommendations for the Grievance Hearing

Appendix A: TASK FORCE SCHEDULE

Meeting with Faculty Senate President and Provost.December 4, 1998

Organizational Meeting December 18, 1998

Weekly Meetings.January 20 - March 19, 1998 and
April 2 - April 30, 1998

Status Report Prepared for Faculty Senate President and ProvostApril 10, 1998

Final Report May 15, 1998

Appendix B: TASK FORCE SUBGROUPS

Three subgroups concentrated on the following categories of recommendations.

1. Recommendations for Effective Ways to Reduce the Number of Grievances

Prakash Krishnaswami
Dennis Law
Jane Rowlett

2. Recommendations for Faculty Handbook Revisions Related to Appeal and Grievance Procedures

Clyde Howard
Michael McNamara
Peter Nicholls
Talat Rahman

3. Recommendations for Grievance Hearings

George Keiser
Charles Reagan
Janice Wissman

Appendix C: RESOURCE PERSONS INTERVIEWED

Lyman Baker. Faculty Advocate
Margaret Conrow. Panel Member
Judy Cox Grievance Panel Chair
Ruth Dyer. GFGB Chair
Brad Fenwick Grievance Panel Chair
Richard Gallagher. Ombudsperson
Wayne Geyer. Panel Member
Bikram Gill. Panel Member
Larry Glasgow. GFGB Chair
Rebecca Gould. GFGB Chair
Maureen Irhie. Panel Member
Curtis Kastner. Grievance Panel Chair
Carol Klopfenstein Ombudsperson
John Lankford. Assistant to the Provost
Rosella Ogg. Panel Member
Lynne Ross. Panel Alternate/Panel Member
Bryan Schurle. Panel Member
Cheryl Strecker. University Attorney
Leland Warren. Ombudsperson

Appendix D:

**RECENTLY TENURED FACULTY SURVEY and
PROBATIONARY TRACK FACULTY APPOINTMENT SURVEY**

**Appendix E: COMPILATION OF SURVEY RESULTS FOR PROBATIONARY
TRACK FACULTY APPOINTMENTS and RECENTLY TENURED FACULTY**

**Appendix F
RESEARCH AND EXTENSION BROCHURE
OMBUDSPERSON: A CHANNEL FOR ISSUE RESOLUTION**

Appendix G: AAUP: POLICY DOCUMENTS AND REPORTS, 1995

****COPIES of Appendix D,E,F,G can be obtained in the Faculty Senate Office, 211 Fairchild Hall,
Phone 2-6053 or e-mail facsen@ksu.edu.