



Date: January 30, 2024
To: Tessa Dysart, Secretary of the Faculty
From: Robert C. Robbins, M.D., President
Re: Request for Clarification on Required Revision to the Faculty Bylaws

In a memo dated August 21, 2023, Faculty Senate received approval of several proposed amendments to the Constitution of the General Faculty. However, approval of the proposed amendments to the Faculty Bylaws was withheld pending a required correction to the grievance procedures.

Specifically, Faculty Senate was informed that a term within the Faculty Bylaws is inconsistent with the Arizona Administrative Review Act (ARA) and sets forth rights within the faculty grievance process that are not available at law. To correct this procedural misstatement, Faculty Senate was directed to delete Article VII, Section 6(a)(viii)(14)(c) from the Faculty Bylaws.¹

On December 18, 2023, the Secretary of the Faculty requested additional information and clarification as to why this provision within the Faculty Bylaws is inconsistent with the ARA.

A. The Origins of the Current Faculty Bylaws Grievance Procedures

The current Faculty Bylaws, Article VII: Grievance Policies and Procedures for Faculty, sets forth the process by which members of the General Faculty can seek review of a general grievance. The purpose of this section is to satisfy, in part, Arizona Board of Regents (ABOR) Policy 6-201(N), which states "each university shall provide an established grievance procedure to resolve any work-related concerns of a faculty member..."²

The faculty grievance process is *not* used to review a decision of dismissal or suspension without pay. The Faculty Bylaws expressly acknowledge that there is a distinct hearing process for dismissal or suspension without pay, which is set forth in ABOR Policy 6-201(L). See Faculty Bylaws, Article VII, Section 1.

¹ Faculty Bylaws, Article VII, Section 6(a)(viii)(14)(c) states, "The President's decision on reconsideration shall include a statement that an appeal to Superior Court pursuant to the Administrative Review Act, A.R.S. § 12-901 et.seq., if desired, must be filed within thirty-five (35) days from the date when a copy of the decision is served upon the party affected."

² Note that University Handbook for Appointed Personnel (UHAP), Chapter 6, provides the Grievance Policy for all appointed personnel, including faculty. The process outlined in UHAP Chapter 6 must be completed before a faculty member may seek further review under the process outlined in the Faculty Bylaws.

Although the grievance process is intended to be wholly distinct from the process for reviewing a dismissal or suspension without pay, the Faculty Senate appears to have copied the ABOR hearing process for these high-level matters and relied on it to serve as the internal process to review lower-level grievances. In other words, the Faculty Senate allows the same level of rights, review, and process to a faculty member who is bringing a grievance against a colleague, as ABOR does for a faculty member facing dismissal from their tenured position.

As a result of directly copying ABOR's hearing process for dismissals or suspension without pay, Faculty Senate's grievance process includes statutory procedural rights that are only available in limited circumstances.

B. The Arizona Administrative Review Act

The Arizona ARA is set forth at ARS §12-901, et seq., and allows for the judicial "review of a final decision of an administrative agency...." See ARS § 12-902(A)(1). A "decision" for purposes of the ARA is a determination that is rendered in a contested case that "affects the legal rights, duties, or privileges of persons and that terminates the proceeding before the administrative agency." See ARS § 12-901(1) (defining "administrative agency") and ARS § 12-901(2) (defining "decision").

When a faculty member faces dismissal or suspension without pay, their "legal rights, duties, or privileges" are at issue. The action itself is taken by the University, on behalf of ABOR, which is an "administrative agency." The faculty member's request for a hearing on the matter results in a "contested case." As such, the University's final determination in the matter, rendered by the President, meets the standards of the ARA and allows a faculty member who receives an adverse decision of dismissal or suspension without pay to seek judicial review under state law. ABOR Policy 6-201(L)(4)(J) sets forth this right and directly references ARS § 12-901, et seq.

When a faculty member files a grievance, the action is between the complaining faculty member and the individual employee against whom they have a concern. The University is not initiating an adverse action against a faculty member that "affects the legal rights, duties, or privileges" of the faculty member. Further, because the University is not a party to the grievance – rather it is faculty vs. faculty – the issue is not a contested case in which the University renders a "decision" as defined by the ARA. As a result, when a final decision is issued in a grievance hearing, that decision does *not* meet the requirements for judicial review under the ARA.

C. Required Revision of the Faculty Bylaws

Because a grievance decision is not subject to review under the ARA, Faculty Bylaws, Article VII, Section 6(a)(viii)(14)(c) is procedurally and legally incorrect.

The rights afforded under the ARA do not extend to decisions on internal faculty grievances. A faculty member's right to seek administrative review under the ARA is limited to decisions resulting in dismissal or suspension without pay under ABOR Policy 6-201(J). The Faculty Senate cannot, through its Bylaws, unilaterally extend the scope of ARS § 12-901 et. seq.

CONCLUSION

The directive in my August 21, 2023 is affirmed. The Faculty Senate must delete Article VII, Section 6(a)(viii)(14)(c) from the Faculty Bylaws and replace with the following language: "(c) The President's decision on reconsideration is final and not subject to further review." Approval of amendments to the Faculty Bylaws is withheld pending this required correction.

Memorandum

To: Faculty Senate
From: Constitution & Bylaws Committee
Re: Bylaws Changes
Date: November 19, 2023

I. Introduction

On November 9, 2023, the Constitution & Bylaws Committee approved the following change to the Faculty Bylaws. This change must now be voted on by the full Senate and the General Faculty.

II. Proposed Change

Delete Bylaws provision found in Article VII, Section 6(a)(viii)(14)(c), which reads:

The President's decision on reconsideration shall include a statement that an appeal to Superior Court pursuant to the Administrative Review Act, A.R.S. § 12-901 et. seq., if desired, must be filed within thirty-five (35) days from the date when a copy of the decision is served upon the party affected.

The deleted provision should be replaced with:

(c) The President's decision on reconsideration is final and not subject to further review.

III. Rationale

According to a letter that the President sent to the faculty secretary,

The Arizona Administrative Review Act, and rights afforded therein, does not extend to decisions on internal faculty grievances. Under ABOR Policy 6-201 (J), the right by a member of the faculty to seek administrative review is limited to dismissal and suspension-without-pay decisions, and the Faculty Senate cannot, through its Bylaws, unilaterally extend the scope of A.R.S. § 12-901 et. seq.