

Oklahoma State University Policy and Procedures

**Informal Ombudsman Review of Qualified Faculty Employment Issues,
and Informal Voluntary Mediation of Qualified Faculty Employment
Issues**

**2-0901
ACADEMIC
AFFAIRS
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PURPOSE

1.01 Oklahoma State University acknowledges that resolving a disagreement between professionals often is best facilitated by early, informal review, discussion and/or mediation between the principals. The Dispute Resolution Procedures, outlined in the "Policy Statement to Govern Appointments, Tenure, Promotions, and Related Matters of the Faculty of Oklahoma State University" adopted by the Board of Regents on March 16, 1990 ("the Policy Statement"), provides an avenue for faculty members to seek formal peer review regarding qualified disputes after they have arisen. However, the review process called for in the Dispute Resolution Procedures involves a major use of institutional resources, and often takes place long after the parties to the disagreement have hardened their positions to the point that it is difficult to achieve a resolution that is mutually satisfactory to all of those involved in the matter. It is believed that use of the formal Dispute Resolution Procedures sometimes could be avoided if there is an opportunity for both faculty and administrators to receive informal assistance and/or mediation regarding a qualified employment dispute at an early stage.

Informal review, discussion and/or mediation sometimes can be facilitated if a neutral third party is asked to assist the parties in their efforts. It has historically been the policy of Oklahoma State University to encourage faculty to bring to the attention of the University's administration concerns or complaints about working conditions or problems. It is the purpose of this procedural protocol to facilitate the means by which faculty can seek such informal assistance.

This procedural protocol is intended to be an augmentation of the Policy Statement's support for informal resolution of qualified personal employment disputes. It neither supercedes nor controls over any provisions of the Policy Statement, including the time limits for filing for formal Dispute Resolution review. However, the Executive Vice President, under Section 2.3(k) to the Policy Statement, is authorized to permit the filing of a formal Dispute Resolution review process after the passing of the

sixty calendar day time limit referenced in Section 1 to Appendix E of the Policy Statement, where such matter has been the subject of good faith mediation efforts prior to the filing of the dispute.

1.02 Ombudsman Role of Director of Affirmative Action. As a means of facilitating the informal review of individual qualified employment matters in dispute, faculty members at Oklahoma State University may request that the Director of Affirmative Action act as an independent ombudsman. In such role, the Director may informally review qualified employment concerns and provide assistance regarding the implementation of current University, college, and administrative unit policies and practices as such impact individual faculty members.

In order to facilitate the ombudsman function of the Director of Affirmative Action, the Director may have access to institutional records as may be pertinent in attempting to resolve disagreements presented for review and shall have the authority to request that academic administrators or others relevant to the matter meet with the Director for the purpose of discussing the matter under review.

Comments or advice from the Director of Affirmative Action to members of the faculty shall not, under any circumstances, be considered as binding upon the University or its academic administrators, and the Director has no authority to estop or speak on behalf of the University in any fashion. Any interpretations of Board of Regent, University, College, or individual administrative unit policies or practices that might be made by the Director shall not be deemed in any instance to be binding upon the University or upon any official of the University.

The Director of Affirmative Action shall have the authority to make informal recommendations to appropriate academic administrators and faculty members seeking assistance which are intended to resolve disagreements presented by faculty.

Recommendations from the Director of Affirmative Action pursuant to this procedural protocol are intended to be confidential between the faculty member and/or necessary administrators to the matter in dispute. Recommendations from the Director of Affirmative Action, and any statements made in an attempt to facilitate informal review under this procedural protocol shall not be available for review or admissible in evidence in any Dispute Resolution Review filed under the Policy Statement. The Director of Affirmative Action may not be called as a witness in any such proceeding regarding the ombudsman efforts engaged in pursuant to this provision and the parties to such review may not comment upon or be questioned about the informal ombudsman review process or recommendations.

The Director of Affirmative Action shall maintain records of the ombudsman attempts engaged in, but shall maintain such documents in a file separate from the personnel file of any individual involved in such efforts and such file shall not constitute a part of the personnel files of these individuals, nor may they have access to same either during or after informal ombudsman efforts. The director shall provide an annual statistical report to the faculty council detailing the number of faculty contacts, the number of petitions filed, the number of cases in which an administrator refused to participate in the process, and the number of cases resolved.

1.03 Internal Informal Voluntary Mediation Efforts

- a. Members of the faculty at Oklahoma State University believing that they have been subjected to unfair, arbitrary, capricious or illegal treatment as to their personal working conditions provided by the University may seek informal, early assistance from the Director of Affirmative Action for Oklahoma State University regarding such concerns. The Director of Affirmative Action, in addition to the other duties of that position, is hereby authorized to serve in the capacity of informal mediator regarding faculty work-related concerns. The Director is authorized to meet with faculty and academic administrators on an informal basis and may discuss with faculty and academic administrators their concerns regarding such work-related issues.

- b. In order to request that informal mediation efforts be engaged in, the requesting faculty member shall file a written request to that effect with the Director of Affirmative Action. This request need not be in any particular form, but merely in writing state that the faculty member desires mediation assistance from the Director, describing in brief summary the nature of the dispute, and identifying the academic administrator(s) that the faculty member believes should be contacted about participating in such mediation.

- c. The Director of Affirmative Action, prior to receiving a written report or engaging in substantive mediation efforts, shall affirmatively advise the faculty member in writing that the Director has overriding affirmative duties to the University regarding the reporting of alleged illegal discrimination. These duties may, in some circumstances, require the Director to disclose to administrative officials of the University statements made to the Director of Affirmative Action

where such statements indicate the possible existence of illegal discrimination. This requirement is not intended to dissuade the parties from engaging in mediation, but is solely made so that the faculty member will be fully informed of the obligations of the Director prior to engaging in mediation attempts.

d. After having been notified of the overriding obligations of the Director of Affirmative Action to the University to report allegations of illegal discrimination, the faculty member shall notify the Director, in writing, regarding whether the faculty member still desires mediation assistance. If so, the Director shall then notify the named academic administrator(s) of the request for mediation assistance and provide with a copy of the faculty member's mediation assistance request. The Director of Affirmative Action shall also give the academic administrator(s) the same communication given to faculty member regarding the Director's overriding duty to affirmatively disclose allegations of illegal discrimination to the University.

e. Upon receiving notification that a request for mediation has been filed with the Director for Affirmative Action, the named academic administrator(s) shall reply to the Director regarding whether informal mediation is agreed to in the matter. In order for mediation to be successful, it inherently must be voluntary in nature, and all parties must be receptive to the mediation efforts. Academic administrators and faculty shall reasonably cooperate with mediation efforts as authorized under this Procedural Protocol, but are not required to agree to mediation when it is believed that mediation has no reasonable chance of success.

f. If the parties agree to informal mediation assistance from the Director for Affirmative Action, the Director shall contact the parties and arrange a mutually convenient time and place where all parties shall personally meet to discuss the matter and attempt to reach agreed resolution of the matter. This meeting should be set as soon as reasonably practicable.

g. At the mediation meeting, the Director of Affirmative Action shall conduct the meeting in a manner which he/she believes will be most conducive to reaching a mutually agreed resolution of the matter under dispute. In the event that the parties are able to reach a mutually agreed resolution, whether a partial or total resolution, such agreement will be

written down and signed by the parties, and entered into the permanent personnel records of the College or academic unit.

In the event that the matters under discussion are not resolved through mediation, the Director of Affirmative Action shall note in a memorandum to the file that the matter could not be resolved and no further communication or documentation of the discussions shall be made by the Director of Affirmative Action.

h. Discussions engaged in through the mediation process are intended to be confidential between the faculty member and academic administrators necessary to resolve the dispute. Statements made during the mediation conference or documents presented to the Director of Affirmative Action for review in such process shall not be available for review or admissible in evidence in any Dispute Resolution Hearing filed under the Policy Statement. The Director of Affirmative Action may not be called as a witness in any such proceeding regarding mediation efforts and the parties to mediation may not comment upon or be questioned about their mediation statements or attempts.

1.04 External Voluntary Mediation Efforts. There are several voluntary mediation entities in the State of Oklahoma which may, in appropriate circumstances, be utilized to assist in the early, informal resolutions of qualified individual employment disputes. When it is deemed appropriate in an individual case, and both the faculty member and the University agree to engage in voluntary mediation through such an external entity, qualified individual employment disputes may be authorized to be forwarded for mediation assistance. In any such case, the Office of Executive Vice President must concur with the referral to an external mediation entity. In all such cases, external referral will only be authorized if the mediation entity has the legal authority to keep its records and any comments made during mediation confidential. Any statements made during such an external referral, and the fact that an external referral has been made, will be inadmissible in any formal OSU Dispute Resolution review hearing.

Recommended by Faculty Council - December 4, 1996

Approved by Deans Council - June 10, 1999

Approved by Executive Vice President - June 10, 1999
Approved by President August, 1999