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Archives

The Evergreen State College
Olympia, Washington 98505

THE EVERGREEN STATE COLLEGE

**Report of the
Grievance and Appeals DTF
to the
President's Advisory Board**

**PROPOSED GRIEVANCE AND
APPEALS PROCEDURE**

20 May 1988

May 22, 1988

TO: Evergreen Community Members

FROM: Walter Niemiec for the President's Advisory Board (PAB)

SUBJECT: Grievance and Appeals DTF Final Report

In February, the PAB charged a DTF to:

" ... examine sections 174-120-030 through 174-120-070 of the proposed Social Contract - Grievance and Appeals Process document (WAC 174-120). The DTF should examine these sections of the proposed document and suggest changes that are consonant with community values and that will apply equally to all community members insofar as they are not superseded by prior regulations e.g. HEP Board rules, Affirmative Action policies, the Union Contract, the Faculty Reappointment policy, etc.."

Attached is the Grievance and Appeals DTF final report entitled "Proposed Grievance and Appeals Procedure." The PAB solicits feedback from the Evergreen Community before making its recommendation to the President. Due to the limited time before the June 8 Board of Trustees meeting, the PAB requests that all written comments be received no later than noon, June 1, 1988. Comments should be sent to Marcia Husseman, Library 3103.

cc: Joe Olander	Student Communications Center
Gail Martin	Student Activities
Patrick Hill	Faculty Agenda Committee
Sue Washburn	Cooper Point Journal
Tom Bartlett	Free Press

Report

1. The Grievance and Appeals DTF met between February and May, 1988. Its membership included:

Steve Bader (staff)
David Frostad (student, alternate)
Matthew Green (student) (Chair)
Jon Holz (staff)
Sung Kim (student)
Charles McCann (faculty)
Mathias Mueller (student)
John Perkins (faculty)
Maureen Petan (student)

2. The charge to the DTF is attached (Appendix A). We examined the proposed WAC 174-120-030 through 174-120-080, as requested.

3. The DTF recommends that the proposed WAC be substituted by a new proposal, which is attached (Appendix B).

4. We recommend that the new proposal be incorporated into the WAC, effective 1 January 1989, or earlier if possible, subject to the successful completion of the following:

- a. comment and approval from the Community;
- b. establishment of a Hearing Board Pool;
- c. establishment of an Appeals Board;
- d. appointment of a Grievance Officer.

In our view, it would be unwise to consider our proposal as successful without each of the conditions (points (a)-(d) to have been satisfied during Fall Quarter, 1988.

5. We recommend that, if implemented, the new proposal be evaluated by a DTF, appointed by the President in Fall 1989. The Evaluation of Grievance and Appeals Procedures DTF should report to the President by February, 1990, and recommend the continuation, modification, or termination of the proposed procedure.

6. During the course of our deliberations, we discovered dissatisfaction with certain practices and procedures currently followed by Campus Security. We recommend, therefore, that the President appoint a DTF in Fall 1988 to evaluate these practices and procedures and to recommend any needed changes. The DTF should include a member of the Campus Security staff.

7. Our DTF discussed but was unable, within our time limits, to resolve completely two issues: (1) grievance and appeals matters during summer quarter, and (2) the procedures for grievances and appeals during the transition to the new proposal. We recommend that, if our proposal is accepted by the Board, the procedures established for summer quarter and the transition period be as close as possible to the procedures recommended here.

8. The DTF wishes at this time to thank the President's Advisory Board for the opportunity to contribute to the shaping of an important community process. Our work has reinforced our faith that the DTF process at Evergreen is a fundamentally sound way to construct policy.

I) Preamble: The Social Contract

II) Rights of Substantive Due Process

III) Rights of Procedural Due Process

- Complaints Procedure
- Respondent's Right To Propose Sanctions Or Demand Hearing
- Hearing Board Procedure
- Appeals

IV) Definitions

I) Preamble: The Social Contract

The Evergreen State College is an academic community sustained by society at large with such means as place, time, faculty, equipment, and the academic freedom necessary for the pursuit of learning. As members of the Evergreen community we understand that in addition to being bound by the laws of the larger society we acknowledge our mutual responsibility for maintaining conditions under which learning may flourish, conditions characterized by openness, honesty, civility and fairness.

These conditions carry with them certain rights and responsibilities that apply to us as groups and as individuals. These rights and responsibilities also require more explicit understanding between each of us and the College, the learning community that we have chosen to join.

We commit ourselves to openness in decision making within the College according to understanding and procedures laid down by our Committee on Governance.

We acknowledge our right to organize formally or informally, to hold public meetings free from disruption, to hold peaceful demonstrations so long as they do not interfere with others of us in pursuit of learning or those of us in support of learning. We acknowledge our right to invite expression of ideas from outside our community, ideas that may not be sympathetic with those of our majority, at the same time as we agree to prevent financial or political exploitation of the College by outside individuals or groups.

In order to foster learning, we encourage the maximum possible use of all College facilities. As individuals in pursuit of learning we have the right of open access to books, equipment and space, subject to their availability, and of access to information, subject to the privacy laws. We also expect certain freedoms essential to the pursuit of learning: freedom from censorship of our ideas, freedom from reprisal owing to our expression of unpopular views or to our associations; freedom from physical or verbal abuse. We also have the right to appropriate privacy and quiet in our individual work spaces and residences.

We understand that these freedoms depend upon two important responsibilities: honesty and civility. In addition to honesty as it is ordinarily understood, academic honesty requires scrupulous care that every word or idea presented in our name, when not part of the general wisdom, is our own. Honesty also requires that we recognize and acknowledge our own biases and prejudices.

Civility requires that we accord others the freedoms we ourselves expect: of privacy and quiet; from abuse, reprisal, and censorship; of access to information and to the College's resources. Civility requires also that we respect those resources, that we save our surroundings and our wherewithal for learning so that those who come after us may enjoy what we have enjoyed.

This Social Contract applies to every member of the Evergreen community: students, faculty, staff, and administrators. Students, faculty, staff, and administrators differ, however, in the degree and kinds of experiences they bring to Evergreen, and they differ also in the functions they have agreed to perform. Each function has its appropriate responsibilities and expectations. We recognize that rights and responsibilities entail sanctions, in the application of which we require due processes appropriate to the severity of the sanction.

These documents and this Social Contract are not meant to be mutually exclusive; that is, the spirit of the Social Contract should inform all our dealings with each other.

II) Rights of Substantive Due Process

1. The community wishes all its members to fulfill the responsibilities in the Social Contract, but it requires its members to meet minimum expectations of civic responsibility. The list of rules below must be followed in order to maintain membership in good standing in the Evergreen Community. Violation of these rules may lead to sanctions.

2. Sanctions that may be imposed are:

a) Expulsion: Disenrollment from the College and termination of community membership.

b) Firing: Recommendation for the dismissal of an Evergreen employee.

c) Suspension: Temporary dismissal from the College and temporary termination of community membership for a finite period of time, not to exceed one calendar year.

d) Community Service: Work done for the community.

e) Restrictions: The loss of certain specified privileges which must be appropriate to the violation, and not to exceed one calendar year.

f) Restitution: Payment to the College or to other persons, groups or organizations for damages incurred as a result of destruction or theft of property.

g) Reprimand: Warning(s) that further misconduct within one calendar year may result in more severe sanctions.

h) Other sanctions may be imposed if they are mutually acceptable to the Respondent and the Hearing Board.

3. Violation of rules one (I) through six (VI) are subject to any of the above sanctions including firing or expulsion from the College.

SUBJECT TO THE ABOVE SANCTION(S), NO PERSON SHALL:

- I) Commit Battery: the doing of physical violence to any person.
- II) on College property or at College sponsored activities: use, possess, or store firearms (other than storage with the Campus Security Office); use, possess, or store explosives of greater force than ordinary fireworks; or use, possess, or store dangerous chemicals (excluding those chemicals stored under the supervision of College staff for instruction, research, and maintenance).
- III) Threaten or harass any person with a weapon, as defined by law.
- IV) Intentionally provide false information to the College for the purpose of gaining admission or employment.
- V) Distribute in an unauthorized manner or possess for purposes of unauthorized distribution any controlled substance, as defined by law (i.e., illegal drugs and alcohol), on College premises or at College-sponsored activities.
- VI) Fail to comply with a sanction previously imposed under this procedure.

4. Violations of rules seven (VII) through eleven (XI) are subject to any of the above sanctions except expulsion or firing.

SUBJECT TO THE ABOVE SANCTION(S), NO PERSON SHALL:

- VII) Commit Assault: threatening to do physical violence to any person.
- VIII) Harass community members or guests physically, emotionally, or sexually, or for racial, religious, political or cultural reasons. Harassment means unwanted contact or communication, submission to which becomes a factor affecting employment or academic standing, or which creates an offensive or intimidating work or academic environment.
- IX) Cause bodily harm to another through an act of negligence or recklessness.
- X) Trespass on another's privacy including: living quarters, offices, papers, computer files, or personal effects.

XI) Steal, destroy, or damage private or College property.

5. Violations of rules twelve (XII) through sixteen (XVI) are subject to any of the above sanctions except Expulsion, Firing, or Suspension.

SUBJECT TO THE ABOVE SANCTION(S), NO PERSON SHALL:

XII) Use alcohol illegally on College property.

XIII) Use or possess for personal use any illegal drug, as defined by law, on College premises or at College-sponsored activities.

XIV) Obstruct another person's access to any portion of the campus, or prevent or impede any person's access to public information; provided that the College may adopt procedures of routine closing of public areas to prevent theft or destruction of College property.

XV) Intentionally cause a false police or fire alarm on College property.

XVI) Smoke in a prohibited area on College property.

6. A repeated violation of the same rule may subject the individual to any of the sanctions outlined above.

7. The President (or in the President's absence, the acting President) may impose an emergency suspension from residence, academic status, or presence on campus when, in the President's judgement, such action appears necessary to protect the safety and well being of college members or college property, or to guarantee the free movement of college members and the unobstructed continuance of college activity.

8. A case of emergency suspension shall be referred immediately to a Hearing Board, which shall take action as soon as possible, but in no case later than ten (10) calendar days.

9. The President (or in the President's absence, the acting President) may cancel the emergency suspension at an earlier time.

III. RIGHTS OF PROCEDURAL DUE PROCESS

10. Every community member may expect the expeditious due process if she or he is involved in a dispute. The rights of due process are described in this document. Harmless procedural errors shall not invalidate a decision or proceeding. Errors that significantly prejudice the rights of the Respondent shall lead to a dismissal of the case against the Respondent. Errors that significantly prejudice the rights of the College shall lead to a new hearing by a new Hearing Board. Fairness to both parties, and to the

College as a learning community, shall be the ultimate guide to all actions taken.

11. Each participating party shall be informed in writing of the contents of this section, prior to any discussion concerning complaints. The respondent has the right to have an advocate or attorney present.

12. Community members shall not be subjected to a hearing twice for the same offence, except if a case is returned to a Hearing Board by the Appeals Board.

13. No action, other than summary suspension, may be imposed upon respondent until guilt is agreed in writing, or the Hearing Board makes a decision, and all appeal rights under this procedure have been exhausted or forfeited.

COMPLAINTS PROCEDURE

14. Any member of the community who has a complaint or charge should contact the Grievance Officer. No complaint will be pursued by the Grievance Officer until a person who witnessed or was a victim of an alleged violation submits a complaint.

15. The complaint must be filed in writing to the Grievance Officer including:

- a) Names of the disputing parties;
- b) Clear and concise description of incident(s) involved in complaint;
- c) Alleged violations of the Social Contract.

16. Immediately upon receiving a complaint, the Grievance Officer shall send a copy of the complaint to the Respondent, informing the Respondent of the right to be represented by an advocate or attorney, and requesting a meeting. The Grievance Officer will, after conferring with the Respondent, ask for more information, dismiss the case, or propose a case against the Respondent in the name of the College. The Grievance Officer shall decide to dismiss the case or bring it to a Hearing Board within 15 working days of the initial receipt of a complaint. Multiple complaints against a Respondent shall generally be consolidated by the Grievance Officer to a single hearing.

RESPONDENT'S RIGHT TO PROPOSE SANCTIONS OR DEMAND HEARING

17. If the Grievance Officer decides to pursue a case in the name of the College, the Respondent may accept or deny guilt. If the Respondent accepts guilt, in writing, she or he may propose a sanction to resolve the case. The Grievance Officer shall not propose a sanction until the Respondent has had an opportunity to propose a sanction. If agreement on guilt and sanction are reached, the agreement shall be made in writing and signed by

the Respondent and Grievance Officer. The agreement may be withdrawn in writing, within one work day. If the agreement is not withdrawn within one work day, the Respondent waives her or his access to the Hearing Board and Appeals Board.

18. An agreement on guilt and sanctions shall be written and contain:
 - a) a description of the complaint for which guilt is accepted;
 - b) the agreed sanction;
 - c) signatures of the Respondent and the Grievance Officer.
19. If no agreement is reached on guilt or sanction, the Grievance Officer shall bring the case before the Hearing Board or shall dismiss the case.

HEARING BOARD PROCEDURE

20. The Grievance Officer shall submit a written notice to all parties involved if a Hearing Board is to be called. Any such hearing shall be conducted pursuant to state law.
21. The Grievance Officer shall convene a Hearing Board from the Hearing Board Pool as soon as possible and in no case more than ten (10) working days of the decision to take the case to a board.
22. The Hearing Board may grant extensions for hearing the case for good cause.
23. Each party (the Grievance Officer and the Respondent) has the right to one (1) peremptory challenge. Either party may challenge any board member based on cause, such as personal bias. Except for peremptory challenges, Hearing Board members may be disqualified upon majority vote of the remaining board members. Any Board member may disqualify herself or himself.
24. The hearing shall not be considered a trial; instead it is a formal means of the community to maintain justice through community participation. If guilt is contested, the Board shall first determine whether the Respondent is guilty or not, based upon a preponderance of the evidence. If guilt is established, the Board shall then determine the appropriate sanction.
25. The Respondent and Grievance Officer must be present at the hearings. Failure of either party to be present without good cause will result in immediate default against the absent party. At the request of the Respondent, the Complainant must be present. Failure of the Complainant to appear shall result in the dismissal of the case.
26. Hearings shall be open, unless the Respondent requests they be closed and a majority of the Hearing Board approve the request. Board

deliberations shall be open unless closed by a majority vote of the Hearing Board.

27. The members of the Hearing Board shall not discuss any aspect of the complaint outside of the hearing. The findings of the Hearing Board shall be based only upon the evidence presented at hearing. Anonymous and hearsay evidence shall not be permitted. Undue repetitious or irrelevant evidence may be excluded. Illegally obtained evidence cannot be used.

28. For purposes of fairness to both parties, no reference to talks or discussions between the Respondent and the Grievance Officer shall be made before the Hearing Board.

29. At least three (3) working days before the hearing, the Grievance Officer and the Respondent shall provide each other with the names of all witnesses, documents, records, recordings to be used. If late evidence is submitted to the Hearing Board, either party may request a delay.

30. The Respondent has the right to testify or not testify in her or his own behalf.

31. The Respondent has the right to be represented and to confront all witnesses.

32. The Hearing Board shall set reasonable time limits for presentation of: opening statements, witnesses, including cross-examination, supporting evidence, and closing statements. The Grievance Officer shall always speak first.

33. If guilt is established, either by agreement of the Respondent or by majority vote of the Hearing Board, the Hearing Board will ask the Respondent and the Grievance Officer each to propose and justify sanctions, all of which will be carefully considered. The Board will then determine by majority vote the appropriate sanction. The Respondent shall not be subjected to cruel and unusual sanctions.

34. The Hearing Board should ordinarily reach its decisions within five (5) working days of its convening.

35. Tape recordings shall be kept of all Hearing Board proceedings.

36. Within five (5) working days, the Board shall send its written decision to the Respondent, the Grievance Officer, and the appropriate Vice President or the President.

37. The Vice President or President is expected to impose the Hearing Board's sanction, provided that procedures for firing shall be subject to other applicable laws, regulations, and contracts.

APPEALS

38. The Appeals Board shall hear and act only on the question of whether the rights to due process were protected. The Appeals Board shall overturn a decision only if a breach in due process significantly affected the appealing party.

39. Either party may send an appeal to the President within five (5) working days of the Hearing Board's decision, stating explicitly why and how due process was violated.

40. The President shall convene an Appeals Board within ten (10) working days of receipt of an appeal.

41. The Appeals Board shall base its decision on the appeal document and all written documents and tapes of the Hearing Board. The Appeals Board is not limited to the errors identified in the appeal document. At the option of a majority of the Appeals Board, both the Respondent and Grievance Officer may be invited to answer questions from the Appeals Board.

42. The Appeals Board shall reach its decision by majority vote within ten (10) working days from the time they are convened.

43. If the Appeals Board rules for a Respondent's appeal, the case is dismissed and closed. 1) If the Appeals Board rules against a Respondent's appeal, the sanction is imposed. 2) If the Appeals Board rules for a Grievance Officer's appeal, the case is returned to a new Hearing Board for a new hearing. 3) And if the Appeals Board rules against a Grievance Officer's appeal, the case is closed.

44. If the Appeals Board finds against the appellant, the appellant may, within five (5) working days, appeal to the Board of Trustees, who have the decision to hear the case or not. Their decision on the case is final.

IV. DEFINITIONS:

(1) COMMUNITY: Enrolled students and employees of the College.

(2) COLLEGE FACILITIES/PREMISES: Property owned, leased, operated, controlled, or supervised by the College.

(3) HEARING BOARD POOL (HBP): The President shall solicit and maintain annually a pool of at least twenty-one (21) qualified volunteer members of the community, seven from each group: students, faculty and staff. Students shall be matriculated not on academic warning or under the provisions of a sanction imposed by the Hearing Board; faculty shall be full-time on a continuing appointment and not under a warning from the Academic Deans; staff shall be continuing members of the staff not under a disciplinary procedure from his/her supervisor.

(4) HEARING BOARD: Five (5) people chosen at random from the HBP, three (3) persons from the Respondent's peer group and one (1) person from each of the other two groups.

(5) PREPONDERANCE OF THE EVIDENCE: The greater weight of evidence; evidence more convincing to the mind than not.

(6) SPONSORED EVENT OR ACTIVITY: Activities scheduled by the College and supervised directly or indirectly by College employees.

(7) APPEALS BOARD: Three community members, one (1) each from the student, faculty and staff groups, each chosen by its members according to its own process and each serving one (1) year, renewable term. Each member of the Appeals Board must have been a member of the community for greater than one full academic year and otherwise meet the qualifications of members of the HBP.

(8) RESPONDENT: The person against whom the complaint is brought.

(9) COMPLAINANT: The person filing a complaint.

(10) WITNESS: Any person who provides testimony to the Hearing Board.

(11) GRIEVANCE OFFICER: A person: (a) who shall be a continuing member of the Community, (b) who is appointed by and accountable to the President, and (c) who serves a three-year renewable term, evaluated annually by the President. The appointment process shall involve a DTF and full community participation. The Grievance Officer is responsible for keeping all records specified in hearings procedures and for implementing this procedure in a knowledgeable way.