

UNIVERSITY OF THE INCARNATE WORD DISPUTE RESOLUTION RULES

1. Definitions

All definitions included in the University of the Incarnate Word Dispute Resolution Plan apply to these Rules.

2. Application

- A. If different rules, applicable to a specific class of Disputes, have been adopted by the Parties and provided to AAA, JAMS, or CPR by Sponsor, these Rules shall not apply to such class of Disputes.
- B. These Rules apply in the form existing at the time proceedings are initiated under them.
- C. To the extent consistent with these Rules, the Employment Dispute Resolution Rules of AAA, JAMS, or CPR also apply to all proceedings governed by these Rules.

3. Mediation

At any time prior to the initiation of or prior to the completion of an arbitration proceeding under these Rules, the Parties may agree to mediate their Dispute by notifying AAA, JAMS, or CPR. The procedures applicable to such mediation shall be determined by AAA, JAMS, or CPR. However, any mediator selected shall have a background in higher education or in employment law.

4. Initiation of the Arbitration Process

- A. Prior to initiating arbitration proceedings under these Rules, a Party must first exhaust the administrative remedies available under applicable grievance procedures published by the University in the *Administrator/Staff Guidelines* or the *Faculty Handbook*.
- B. After satisfying the requirements set forth in Section 4.A., a Party may initiate arbitration proceedings under these Rules at any time, subject to any defenses applicable to the timeliness of the claim, including limitations and laches.

C. A Party may initiate arbitration proceedings by submitting a written request to initiate such proceedings to the arbitration service of its choice among AAA, JAMS, and CPR and tendering the appropriate administrative fee.

D. Copies of the request shall be served on all other Parties to the Dispute by AAA, JAMS, or CPR. The request shall describe the nature of the Dispute, the amount involved, if any, the remedy sought, and the proceeding locale requested.

E. Arbitration proceedings may also be initiated by a Participant against the University by submitting a written request to initiate arbitration proceedings on the University's Dispute Resolution Plan Administrator. Such request shall identify the arbitration service of the initiating party's choice among AAA, JAMS, and CPR. In such a case, the University shall promptly forward any properly submitted request it has received to AAA, JAMS, or CPR, in accordance with the initiating Party's identified choice.

F. Parties against whom a claim is asserted shall file an answering statement within twenty-one (21) business days of receiving notice of intent to arbitrate or a specification of claims. Such answering statement shall include any counterclaims.

5. Administrative Conference

AAA, JAMS, or CPR shall convene an administrative conference as soon as possible after receipt of the answering statement or after expiration of the time for filing an answering statement, if one has not been filed. The conference may be held in person or by telephone. At the conference, AAA, JAMS, or CPR will determine whether the Parties are in agreement on a method to resolve the Dispute. If the Parties are in agreement, AAA, JAMS, or CPR will implement the procedure in accordance with their rules upon payment of any applicable fee. If the parties have previously attempted and failed to resolve the Dispute through the applicable grievance procedure, mediation, or another nonbinding mechanism, the Dispute shall be arbitrated under these Rules.

6. Appointment of Arbitrator

Immediately after payment of the arbitration fee, AAA, JAMS, or CPR shall simultaneously send each Party an identical list of names of persons chosen from a pool of qualified arbitrators (who have a background in higher education or in employment law) which AAA, JAMS, or CPR shall select and maintain. Such list shall be accompanied by information concerning the background and experience of each person whose name appears on the list. Each Party to the Dispute shall have fourteen (14) business days from the transmittal date to strike any names objected to, number the remaining

names in order of preference, and return the list to AAA, JAMS, or CPR. If a Party does not return the list within the time specified, all persons therein shall be deemed acceptable. From among the persons who have been approved on both lists, and in accordance with the order of mutual preference, AAA, JAMS, or CPR shall invite the acceptance of the arbitrator to serve. Any Party shall have the right to strike one list of arbitrators in its entirety. When a Party exercises this right, AAA, JAMS, or CPR shall issue a new list of arbitrators consistent with the above procedures. Notwithstanding the foregoing, Disputes involving the tenure, non-reappointment, or dismissal of a faculty member shall be heard by a panel of three (3) arbitrators selected in accordance with the process set forth in this Section 6.

7. Qualifications of the Arbitrator(s)

No person shall serve as an arbitrator in any matter in which that person has any financial or personal interest. Prior to accepting appointment, the prospective arbitrator shall disclose any circumstance likely to prevent a prompt hearing or create an appearance of bias. Upon receipt of such information from the arbitrator or any other source, AAA, JAMS, or CPR will either replace that person or communicate the information to the Parties for comment. Thereafter, AAA, JAMS, or CPR may disqualify that person, and its decision shall be conclusive.

8. Vacancies

If a vacancy occurs for any reason or if an appointed arbitrator is unable to serve promptly, the appointment procedure set forth in Section 6 shall apply to the selection of a substitute arbitrator.

9. Date, Time and Place of Hearings

- A. The arbitrator(s) shall set the date, time and place of any hearing.
- B. Notice of any hearing shall be given at least twenty (20) business days in advance, unless the arbitrator(s) determine(s) or the Parties agree that a shorter time is necessary.
- C. The arbitrator(s) shall make every effort, without unduly incurring expense, to accommodate the Parties in the selection of a hearing location.

10. Conferences

At the request of AAA, JAMS, or CPR, or of a Party, or on the initiative of the arbitrator(s), the arbitrator(s) or AAA, JAMS, or CPR may notice and hold conferences for the discussion and determination of any matter which will expedite the hearing, including but not limited to:

- A. venue,
- B. clarification of issues,
- C. determination of preliminary issues, including summary determination of dispositive legal issues,
- D. discovery,
- E. the time and location of hearings or conferences,
- F. interim legal or equitable relief authorized by applicable law,
- G. pre- or post-hearing memoranda,
- H. stipulations; and
- I. any other matter of substance or procedure.

11. Mode of Hearings and Conferences

In the discretion of the arbitrator(s) or by agreement of the Parties, conferences and hearings may be conducted by telephone or by written submission, as well as in person.

12. Pre-hearing - Discovery

- A. On any schedule determined by the arbitrator(s), each Party shall submit in advance, the name, address, and phone number of each witness it intends to produce, plus copies of any documents it intends to present, and a brief statement of the witness's knowledge of the subject matter.
- B. The arbitrator(s) shall have discretion to determine the form, amount and frequency of discovery by the Parties.
- C. Discovery may take any form permitted by the Federal Rules of Civil Procedure, as amended from time to time, subject to any restrictions imposed by the arbitrator(s).

13. Representation

Any Party may be represented by legal counsel or by any other authorized representative of the Party's choice.

14. Attendance at Hearings

The arbitrator(s) shall maintain the privacy of the hearings to the extent permitted by law. Any person having a direct interest in the matter is entitled to attend the hearings.

The arbitrator(s) shall otherwise have the power to exclude any witness, other than a Party or other essential person, during the testimony of any other witness. The arbitrator(s) shall determine whether any other person may attend the hearing. Upon the request of any Party, the arbitrator(s) shall exclude any witness during the testimony of any other witness.

15. Postponement

A. The arbitrator(s), for good cause shown by a Party, or on agreement of the Parties, may postpone any hearing or conference.

B. The pendency of court proceedings related to the same matter is not good cause for postponement.

16. Oaths

Before proceeding with the first hearing, each arbitrator may take an oath of office and, if required by law, shall do so. The arbitrator(s) may require witnesses to testify under oath administered by any duly qualified person and, if required by law or requested by any Party, shall do so.

17. Record of Proceedings

There shall be no stenographic, audio, or video record of the proceedings unless requested by one of the Parties or specified by the arbitrator. The Party requesting the record shall bear the entire cost of producing the same. Copies of the record shall be furnished to all other Parties upon request and upon payment of the cost of reproduction.

18. Procedure

The hearings shall be conducted by the arbitrator(s) in whatever order and manner will most expeditiously permit full presentation of the evidence and arguments of the Parties.

19. Arbitration in the Absence of a Party

The arbitrator(s) may proceed in the absence of Parties or representatives who, after due notice, fail to be present or fail to obtain a postponement. An award shall not be made solely on the default of a Party. The arbitrator(s)

shall require any Party who is present to submit such evidence as the arbitrator(s) may require for the making of an award.

20. Evidence

A. The arbitrator(s) shall be the sole judge of the relevancy, materiality, and admissibility of evidence offered. Conformity to legal rules of evidence shall not be necessary.

B. The arbitrator(s) shall have discretion to subpoena witnesses or documents on his/her/their own initiative or at the request of a Party.

C. The arbitrator(s) may consider the evidence of witnesses by affidavit or declaration, but shall give it only such weight as the arbitrator(s) deem(s) appropriate after consideration of any objection made to its admission.

21. Post-Hearing Submissions

All documentary evidence to be considered by the arbitrator(s) shall be filed at the hearing unless the arbitrator(s) find(s) good cause to permit a post-hearing submission. All Parties shall be afforded an opportunity to examine and comment on any post-hearing evidence. The arbitrator(s) shall permit the filing of post-hearing briefs at the request of a Party and shall determine the procedure and timing of such filings.

22. Closing and Reopening of Record

A. When the arbitrator(s) is/are satisfied that the record is complete, including the submission of any post-hearing briefs or documents permitted by the arbitrator(s), the arbitrator(s) shall declare the record closed.

B. The record may be reopened on the initiative of the arbitrator(s) or upon application of a Party at any time before the award is made.

23. Waiver of Procedures

Any Party who fails to object in writing, after knowledge that any provision or requirement of these Rules has not been complied with, shall be deemed to have waived the right to object.

24. Service of Notices and Papers

Any papers, notices, or service of process necessary or proper for the initiation or continuation of any proceeding under these Rules (including the award of the arbitrator(s), any court action in connection therewith, or the entry of judgment on an award made under these Rules) may be served on a

Party (1) by mail addressed to the Party or his or her representative at the last known address or (2) by personal service. AAA, JAMS, CPR, the Parties, and the arbitrator(s) may also use facsimile transmission, telex, telegram, or other written forms of electronic communication to give any notices required by these Rules.

25. Communications with the AAA, JAMS, CPR and the University

A. Any Party may notice, serve or communicate with AAA by contacting:

District Vice President
American Arbitration Association
1331 Lamar, Suite 1180

Houston, TX 77010
Phone: (713) 739-1302
Fax: (713) 739-1702
www.adr.org

B. Any Party may notice, serve or communicate with JAMS by contacting:

Business Manager
JAMS
8401 North Central Expressway
Suite 610
Dallas Texas 75225
Phone: (214) 891-4500
Fax: (214) 369-9404
www.jamsadr.com

C. Any Party may notice, serve or communicate with CPR by contacting:

Sr. Vice President for Dispute Resolution Services
CPR Institute for Dispute Resolution
366 Madison Avenue
New York, NY 10017-3122
Phone: (212) 949-6490
Fax: (212) 949-8859
www.cpradr.org

D. Any Party may notice, serve or communicate with the University by contacting:

Dispute Resolution Plan Administrator
The University of the Incarnate Word
4301 Broadway
San Antonio, Texas 78209
Phone: (210) 829-3136
Fax: (210) 829-6096

26. Communication with the Arbitrator(s)

There shall be no direct communication between the Parties and the arbitrator(s) other than at oral hearings or conferences conducted in accordance with these Rules. Any other oral or written communications from the Parties to the arbitrator(s) shall be transmitted to the AAA, JAMS, or CPR (and copied to the Parties) for forwarding to the arbitrator(s), unless the Parties and the arbitrator(s) agree otherwise.

27. Time of Award

The award shall be promptly made by the arbitrator(s), unless otherwise agreed by the Parties or specified by applicable law, no later than thirty (30) business days from the date of the closing of the record or, if applicable, the closing of a reopened record.

28. Form of Award

The award shall be in writing and shall be signed by the arbitrator(s). The arbitrator(s) shall prepare a written opinion explaining the reasons for the award and recording his/her/their findings of fact and interpretations of law in as much detail as necessary to make them clear. The decision of the arbitrator(s) shall be final and binding upon the Parties. The award shall be executed in any manner required by applicable law.

29. Modification of Award On order of a court of competent jurisdiction, or on agreement of the Parties, the arbitrator(s) shall modify any award. The arbitrator(s) may modify an award on the motion of a Party if the arbitrator(s) finds that the award, as rendered, is ambiguous or defective in form, or if the award requires an illegal or impossible act. These are the only circumstances under which the arbitrator(s) shall have jurisdiction to withdraw or modify an award.

30. Settlement

If the Parties settle their Dispute during the course of the arbitration, the arbitrator(s) may set out the terms of the settlement in a consent award.

31. Scope of Arbitrator's Authority

The authority of the arbitrator(s) shall be limited to the resolution of legal Disputes between the Parties. As such, the arbitrator(s) shall be bound by and shall apply applicable law including that related to the allocation of the burden of proof as well as substantive law. The arbitrator(s) shall not have the authority either to abridge or enlarge substantive rights available under

applicable law. The arbitrator(s) shall be bound by and shall comply with the provisions of the Plan and these Rules.

32. Judicial Proceedings and Exclusion of Liability

A. Neither AAA, JAMS, CPR, nor any arbitrator is a necessary Party in any judicial proceedings relating to proceedings under these Rules.

B. Neither AAA, JAMS, CPR, nor any arbitrator shall be liable to any Party for any act or omission in connection with any proceedings within the scope of these Rules.

C. Any court with jurisdiction over the Parties may compel a Party to proceed under these Rules at any place and may enforce any award made.

D. Parties to these Rules shall be deemed to have consented that judgment upon the award of the arbitrator(s) may be entered and enforced in any federal or state court having jurisdiction over the Parties.

E. Initiation of, participation in, or removal of a legal proceeding shall not constitute waiver of the right to proceed under these Rules.

F. Any court with jurisdiction over the Parties may issue any injunctive orders (including preliminary injunctions) if the necessary legal and equitable requirements under applicable law are met pending the institution of proceedings under these Rules.

33. Fees and Expenses

A. The expense of witnesses shall be borne by the Party producing such witness, except as otherwise provided by law or in the award of the arbitrator(s).

B. All attorney's fees shall be borne by the Party incurring them, except as otherwise provided by law or in the award of the arbitrator(s).

C. Discovery cost (e.g., court reporter fees for original transcripts) shall be borne by the Party initiating the discovery. The cost of copies of deposition transcripts or other discovery shall be borne by the Party ordering the copy, except as otherwise provided by law or in the award of the arbitrator(s).

D. The fees and expenses of experts, consultants and others retained or consulted by a Party shall be borne by the Party utilizing those services, except as otherwise provided by law or in the award of the arbitrator(s).

E. A Participant shall pay a \$50 fee if he or she initiates arbitration. Otherwise, a Participant shall not be responsible for payment of fees or expenses of proceedings under these Rules including required travel of the arbitrator(s), expenses of the arbitrator(s), AAA, JAMS, or CPR, and the cost of any proof produced at the discretion of the arbitrator(s).

F. If the demand for arbitration is initiated by the University, all of the fees described in Section 33.E. will be paid by the University.

34. Interpretations and Application of These Rules

The arbitrator(s) shall interpret and apply these Rules insofar as they relate to the powers and duties of the arbitrators. All other rules shall be interpreted and applied by AAA, JAMS, or CPR.

35. Applicable Law

A. Proceedings under these Rules and any judicial review of awards shall be governed by the Act.

Except where otherwise expressly provided in these Rules, the substantive law applied shall be state or federal substantive law which would be applied by a United States District Court sitting at the place of the hearing.