

Complaint and Grievance Procedures

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Intent

The University recognizes and endorses the importance of academic fair process and of internal resolution of disputes without fear of prejudice or reprisal. Accordingly, the University will use its best efforts to encourage the informal and prompt settlement of disputes, and the orderly processes hereinafter set forth are designed to protect academic due process, academic freedom, and tenure. The University's intent is that these processes be the only method for resolving all grievances as defined herein.

Definitions

1. Complaint

A complaint is an allegation by a faculty member that he or she has received unfair or improper treatment regarding an aspect of employment not covered by provisions under other sections of this handbook and not explicitly defined as a grievable issue. Complaints may include, but are not limited to, actions regarding workload, teaching assignments, annual evaluation, or other disputes among faculty members. All complaints pertaining to harassment will follow the procedures contained in Section Two.III.B. of this handbook. All issues that are explicitly covered by the Grievance Procedure shall be addressed through that procedure.

1. Grievance

A grievance is defined as an allegation by a faculty member (or a group of faculty members) that there has been a breach, misinterpretation, or misapplication of University policy or procedure as set forth in the faculty handbook or a claimed infringement by a department, school, or through administrative actions, of the rights of a faculty member as set forth in the faculty handbook, which include claims pertaining to compensation, appointment or reappointment, sabbatical, promotion, tenure, dismissal, suspension, reassignment, termination, academic freedom, or discrimination. All other issues shall be addressed by the Complaint Procedure.

Grievances Alleging Inadequate Consideration: Insofar as a faculty member alleges that a decision was based on inadequate consideration, the Grievance Committee will determine whether the decision was the result of adequate consideration in terms of the relevant standards of the institution. The committee will not substitute its judgment on the merits for that of the body or individual that made the decision. If the committee believes that adequate consideration was not given to the faculty member's qualifications, it will request reconsideration by the body or individual that made the decision, indicating the respects in which it believes the consideration may have been inadequate.

Grievances Alleging Violations of Academic Freedom or Discrimination: When a faculty member alleges that a decision was based on academic freedom violations or discrimination based on sex, religion, national origin, age, disability, marital status, or sexual orientation, the faculty member who brings the grievance bears the burden of proof for proving the grounds on which allegations are based. If the faculty member makes a *prima facie* case, then those who made the decision must come forward with evidence in support of their decision.

1. **Prima Facie:** A prima facie case means that the faculty member has established sufficient evidence to prevail, until contradicted by other evidence.

Procedure for Handling Complaints

Step 1: Informal Complaint Procedure

Before instituting a formal complaint procedure, if the complainant feels comfortable in doing so, the complainant should appeal to the person or official body responsible for the actions to which the complainant has objection or to the immediate supervisor, if any, of that person or body to determine if the complaint or problem may be resolved without resorting to formal action. This would normally be the Department Chair, Program Director or the Dean. If the complainant is not comfortable addressing it with his or her immediate supervisor, he or she may address the issue with the next highest administrator or supervisor.

Step 2: Formal Complaint Procedure

Formal complaint procedures may be initiated when a complainant has been unsuccessful in resolving the matter informally. The complainant may then file a formal complaint with the Office of the Vice President for Academic Affairs (or the Office of the President, if the Vice President is a respondent to the grievance). The Vice President for Academic Affairs will either conduct a prompt and thorough investigation of the complaint him or herself and issue a finding or refer the complaint to the Director of Human Resources or another designated party who will conduct a prompt and thorough investigation and will issue a finding as to whether the complaint is sufficiently substantiated and grievous to warrant administrative action. A thorough investigation will consist of interviewing personnel directly involved in the complaint and witnesses to the complaint and reviewing all documentary evidence pertaining to the complaint. The complaint will then be referred back to the Vice President for Academic Affairs for disposition.

Step 3: Appeal

If a faculty member wishes to appeal the disposition of the complaint, he or she may appeal to the President. The President's decision shall be final.

Procedure for Handling Grievances

1. Grievance Committee

The Faculty Executive Committee shall appoint a pool of ten eligible Grievance Committee members, none of whom can be a member of the ART Committee, and all of whom must be tenured, full-time faculty members. To the best of the FEC's ability, the pool of members shall reflect a balance across the University's disciplines and schools and shall be representative of the composition of the faculty as a whole. The appointment of these members shall be ratified by the faculty assembly. The members of the pool shall serve a three year staggered term.

A panel of five hearing members and two alternates shall be selected for each grievance. FEC (or if necessary an FEC committee member designate) shall designate a chair and a vice-chair. In order to select the panel and the alternates for a particular grievance, the FEC shall first survey the pool to determine whether any of the pool members have a conflict of interest, as defined below. Once the FEC has eliminated any members of the pool who have a valid conflict of interest, the parties shall be given the opportunity to eliminate one member of the pool each, without cause. The remaining pool members shall be randomly selected to serve as panelists or alternates. The Grievance Committee does not constitute a faculty member's sole committee assignment.

a. Conflict of Interest

No faculty member may serve on the Grievance Committee who has a conflict of interest as asserted by the faculty member, any involved party, or as determined by the Chair of the Grievance Committee. For the purposes of this policy, a "conflict of interest" is defined as a situation in which the Grievance Committee member has interests or relationships, including personal or business relationships with any of the parties to the grievance, that might reasonably be construed to affect the member's independent, unbiased judgment when making or participating in the making of decisions, or where such decisions will or could materially benefit them directly, indirectly, or their family. Examples of Grievance Committee members who would be in conflict of interest would include those with prior involvement in formal decision-making related to the allegations contained in the grievance or having a financial relationship with any of the involved parties.

1. Pre-Grievance Procedure for Dismissals (page 2.71)

Before dismissing any faculty member for cause, the President of the University or his or her designee will give the faculty member involved a written statement of his or her intent to take this action, with reasons framed with reasonable particularity. Because of the nature of dismissal, no fixed time can be specified for notice# however, such action is usually not taken without prior discussions with and written warnings to the faculty member.

Upon the University's giving written notification to the faculty member of dismissal for cause, or of reassignment or suspension, the faculty member may file a written grievance with the Grievance Committee. If a difference of opinion persists between the faculty member and the University following the Human Resource Director's attempt to settle the grievance by informal methods, the faculty member has the right to have a formal grievance hearing. The faculty member may, however, waive a formal grievance hearing. In any case of dismissal or suspension for cause, the University bears the burden of proof that adequate cause exists for the action, which proof shall be by clear and convincing evidence.

1. Interim Actions

Pending the decision of the Grievance Committee upon a grievance, a faculty member may be either suspended or assigned to other duties in lieu of suspension, if immediate harm to himself or herself or others is threatened by his or her continuance. Unless legal considerations forbid, any such suspension will be with pay.

1. Procedure for Grievances (page 2.72)

Step I. Filing a Grievance

In order to commence the grievance process, a grievant shall submit a written grievance with supporting evidence. The written grievance should set forth in detail the alleged wrong, against whom it is directed, the relief or remedy sought by the grievant, and may contain any other data that the grievant deems pertinent.

Written grievances must be delivered to the Vice President for Academic Affairs (or the President of the University, if the Vice President is a respondent to the grievance), within 30 calendar days after notice of the occurrence of the event(s) upon which the grievance is based or within 30 calendar days after the grievant knew, or in the exercise of reasonable diligence should have known, of the occurrence of the event(s) upon which the grievance is based. The Vice President for Academic Affairs (or the President of the University) will provide a copy of the written grievance to the Director of Human Resources.

Within 15 business days, the Office of the Vice President for Academic Affairs (or the Office of Human Resources if so designated by the Vice President of Academic Affairs) will provide a copy of the grievance to the Grievance Committee and to all named respondents. Grievances that are based on an event(s) that occur(s) within 14 calendar days before a Christmas or summer vacation, or during such vacation periods, must be filed within 21 days after the first day of the class of the next semester. The resolution of grievances filed within 14 calendar days before a Christmas or summer vacation, or during such vacation periods may be postponed to the next semester at the discretion of the Grievance Committee if the Grievance Committee is

unavailable during such vacation periods. The time period for the receipt of written grievances and the delivery of written grievances to the Grievance Committee may be extended by the Vice President for Academic Affairs if unusual or complex circumstances exist. The grievant shall be notified of the extension.

Step II. Informal Resolution

Upon receipt of the written grievance, the Director of Human Resources will meet with the parties regarding the procedures to be followed and will attempt to settle the grievance by informal methods. In the course of doing this, the Director of Human Resources will conduct informal discussions with and between the concerned parties, at all times preserving confidentiality. The purpose of these discussions will be to reach mutually acceptable common ground. The purpose of these discussions shall not be to determine the relative merits of each party's position.

If a grievance is resolved by these informal methods, the resolution shall be memorialized in writing by the parties and the Director of Human Resources. Such resolutions shall not constitute a binding precedent in the disposition of similar grievances. No offer of settlement of a grievance by either party or suggested resolution will be admissible as evidence in formal grievance proceedings or elsewhere. Upon reaching a mutually satisfactory outcome, the Director of Human Resources shall notify the Grievance Committee that the grievance is closed.

If the grievance is not resolved informally by the Director of Human Resources, and if requested by the parties, the chair of the Grievance Committee may appoint a mediator acceptable to both parties. Mediation shall consist of informal discussions between the Vice President for Academic Affairs and/or the chair of the Grievance Committee, the parties, and the mediator, with the goal of resolving the grievance. No official record shall be kept of the discussion during mediation. If the grievance is resolved to the satisfaction of the grievant through mediation, the grievant and the mediator will report this fact in writing to the chair of the Grievance Committee, thus terminating the grievance procedure and resolving the dispute. If mediation has not led to settlement within a 21 day period after filing the grievance, the grievance procedure shall proceed for formal grievance hearing.

Step III. Formal Process

1. Formal Hearings

If the grievant is an individual faculty member or a group of faculty members, and the grievance cannot be resolved by informal methods, the Grievance Committee will conduct a formal grievance hearing. Instances where a formal hearing may be conducted are:

- a) An accused faculty member who is dissatisfied with the discipline he or she received as a result of a harassment complaint
- b) Disputes involving charges that a faculty member's academic freedom rights have been abrogated.
- c) If tenure is denied to a tenure-track faculty member or if a faculty member is denied a promotion, the faculty member, department chair or dean may initiate an appeal by filing a grievance with the Vice President for Academic Affairs, asking the Grievance Committee to review the process and advise the President regarding whether or not the process has been fair. Grievances may be made only on procedural, not substantive grounds. The Grievance Committee will not substitute its judgment on the merits of the case for promotion or tenure but rather determine whether the decision was the result of adequate consideration.
- d) If a faculty member is denied a sabbatical, the faculty member, department chair or dean may initiate an appeal by filing a grievance with the Vice President for Academic Affairs, asking the Grievance Committee to review the process and advise the President regarding whether or not the process has been fair. Grievances may be made only on procedural, not substantive grounds. The Grievance Committee will not substitute its judgment on the merits of the case for sabbatical but rather determine whether the decision was the result of adequate consideration.
- e) If a faculty member feels that an adverse action taken pursuant to the post-tenure review process was the result of prohibited prejudice or bias or that the University's post-tenure review procedures (that resulted in the adverse action) were not followed.
- f) In cases where a faculty member believes that his or her non-reappointment was the result of prohibited prejudice or bias or that the University's procedures pertaining to non-reappointment were not followed.
- g) If the faculty member is dissatisfied with the University's decision to terminate due to disability (based on the inability to perform the essential functions of the position), or for prolonged mental or physical illness.
- h) Following a notice of the intention to terminate a contract because of a reduction of student interest and/or consolidation of a program, if the faculty member alleges that the University's decision was the result of prohibited bias or prejudice or that the University's stated procedures pertaining to a termination due to program change/consolidation were not followed.
- i) Following notice of termination because of financial exigency, if the faculty member alleges that the University's decision was the result of prohibited bias or prejudice or that the University's stated procedures pertaining to a termination due to financial exigency were not followed.
- j) The University's decision to terminate a tenured or non-tenured faculty member for cause may be the basis of a formal grievance by that faculty member before the Grievance Committee.
- k) Suspension or reassignment, for alleged adequate cause, of a tenured faculty member or untenured faculty member within the term of the individual contract.

With regard to these grievances, it must be alleged either that:

- i) the decision in the above matters was based upon considerations in violation of the faculty member's academic freedom#
- ii) the decision in the above matters was based on consideration in violation of governing policies bearing upon nondiscrimination with respect to race, sex, creed, religion, sexual orientation, marital status, national or ethnic origin, physical or mental handicap, veteran status, age, or other factors that cannot lawfully form the basis of any employment decision#
- iii) the decision was not based on adequate consideration by the relevant faculty or administrative body. If a faculty member alleges that a decision was based on inadequate consideration, the Grievance Committee will determine whether the decision was the result of adequate consideration in terms of the relevant standards/procedures set forth in the faculty handbook. The Grievance Committee will not substitute its judgment on the merits for that of the deciding person or persons.

It is easier to state what the standard "adequate consideration" does not mean than to specify in detail what it does. The term "adequate consideration" refers essentially to matters that are procedural rather than substantive issues. Examples of questions concerning adequate consideration follow: Did the relevant faculty body conscientiously arrive at its decision? Was the appropriate and relevant evidence bearing on the relevant performance of the candidate sought out and considered? Was there adequate deliberation over the import of the evidence in light of the relevant standards? Were irrelevant and improper standards excluded from consideration? Was the decision a bona fide exercise of professional academic judgment? These are the kinds of questions suggested by the standard "adequate consideration."

If the Grievance Committee believes that adequate consideration was not given to the faculty member's qualifications, it will request reconsideration by the deciding person or persons, indicating the respects in which it believes the consideration may have been inadequate. It will provide copies of the findings to the faculty member, the deciding person or persons, and the Vice President for Academic Affairs.

1. Procedures

- a) When a formal grievance hearing is to be conducted, the Grievance Committee will notify the parties involved of the date and time of the hearing in writing. The arrangements for the hearing date, time and place will be made within 31 calendar days of receipt of the grievance by the Grievance Committee, and shall provide at least 21 calendar days notice to the parties, committee members, and administrators. This 31 day period may be extended to allow sufficient time for the Director of Human Resources and the parties to engage in informal resolution efforts. In such a case, the Director of Human Resources shall alert the Grievance Committee as to the amount of time necessary for the extension. All other corresponding deadlines shall also be extended in that event.
- b) The 21 day notice period is to allow all parties adequate time to prepare evidence, arrange for witnesses and obtain documentary and other information. The Grievance Committee may grant appropriate continuances to enable either party to investigate evidence, or for any other appropriate reason.
- c) The parties shall submit their evidence and witness lists to the Grievance Committee no later than 7 calendar days prior to the hearing date. The Grievance Committee will cooperate with the grievant in securing witnesses and making available documentary and other evidence to the extent possible. The Grievance Committee shall promptly provide each party's submitted evidence and witness lists to the other party. The committee may also request witnesses and documents that it believes would assist members in their deliberation. The Grievance Committee retains the right to exclude evidence if it determines it is irrelevant or prejudicial. Failure to submit evidence in accordance with the established deadlines will result in exclusion of that evidence from consideration unless the party can show that the evidence is new or was not available (through no fault of the party's own) at the time that it was due. The time period may be extended by mutual agreement of the parties.
- d) A party's failure to meet any of the deadlines established by this policy or by the Grievance Committee may result in dismissal of the grievance. A grievance that has been dismissed may not be re-filed.
- e) At any stage in the grievance process, a party will be permitted to have an advisor of his or her own choice selected from within the University community. The advisor shall support the party but the ultimate burden of presenting and proving his or her case rests with the party. The advisor may address the Committee but shall not testify nor question witnesses.
- f) The hearing will be conducted in private and the Grievance Committee and the parties will never make public statements about the case in order to protect the confidentiality of those involved. The parties shall be permitted to question witnesses. The Grievance Committee retains the right to ensure that the questioning is not unduly harassing, adversarial or invasive. The witnesses shall be treated with dignity and respect as members of the University's community. The Grievance Committee is charged with promoting fact-finding in a respectful manner. The Grievance Committee may question the witnesses itself or may take over the questioning of a witness if a party is unable to conduct the questioning in a respectful manner.
- g) In any case of dismissal for cause, the University bears the burden of proof that adequate cause exists for the action, which proof shall be by clear and convincing evidence. In all other cases, the burden of proof shall be a preponderance of the evidence. This burden shall rest with the grievant.
- h) The Grievance Committee chair must record the audio portion of the hearing (but not the deliberations) and keep it secure. The Grievance Committee chair must maintain the recording, which is the property of the University. During the hearing process, the recording will be made available on request to the Grievance Committee or the parties..
- i) The chair of the Grievance Committee will have sole discretion for determining all procedural issues not specifically discussed herein.

j) The Grievance Committee will not be bound by strict legal rules of evidence. The Grievance Committee shall attempt to obtain the most reliable evidence and shall weigh it accordingly.

k) The Grievance Committee will present its decision in writing within 15 business days of the hearing to the parties, the Vice President for Academic Affairs and the President of the University. The decision will take the form of findings of fact, conclusions, and dispositions. The disposition must be based solely on the hearing record, pertinent University procedures as set forth in the faculty handbook, and University policy.

1. Appeal to President

A party may, within 14 calendar days of receipt of the Grievance Committee's decision, file a written appeal to the President. This appeal shall be limited to the following grounds:

- There is new evidence that could have affected the decision that was not reasonably known through no fault of the party's own;
- The investigation or decision exhibited prejudice, bias or other unfair treatment that could have affected the outcome of the case; or
- The institution's stated procedures were not followed.

The President shall review the record and respond within 30 business days as to the final disposition of the grievance.

1. Appeal to Board of Regents

If the President is named as a party to the grievance, the grievant(s) may file an appeal of the Grievance Committee's decision within 14 calendar days of the receipt of the decision. Such an appeal is filed with the chair of the Board of Regents. The appeal shall be limited to the following grounds:

- There is new evidence that could have affected the decision that was not reasonably known through no fault of the party's own.
- The investigation or decision exhibited prejudice, bias or other unfair treatment that could have affected the outcome of the case; or
- The institution's stated procedures were not followed.

The Board of Regent's Executive Committee will then review the record of the case at its next meeting and render a final decision on the grievance within 30 business days of that meeting. In case of any discussion over presidential involvement, the Board of Regent's Executive Committee shall be the sole judge of such involvement.

In all cases where dismissal for cause is recommended or when denial of tenure is recommended, the President must, transmit to the Board of Regent's Executive Committee the record of the case.

General Provisions

The filing or pendency of any grievance under the provisions of this article shall not prevent the University from taking the action complained of, subject, however, to the final decision on the grievance.

Failure at any step of this procedure to appeal a grievance to the next step within the specified time limits, or such additional period of time as may be mutually agreed upon in writing, shall be deemed to be acceptance of the decision rendered at that step.

Extensions to time will normally be granted for good and sufficient reasons (e.g., illness).