Faculty Grievance Policy - Faculty Handbook

I. POLICY STATEMENT

This Policy is intended to provide a fair, internal process for resolving employment related disputes that arise between faculty or academic staff members and administrators. The formal procedures described in this Policy are intended to be used only when matters cannot be resolved informally. A faculty or academic staff member who feels aggrieved should first seek an informal resolution at the unit, department, or college level before filing a formal grievance under this Policy. The procedures contained in this Policy are not intended to be used to challenge the desirability of unit or University policies.

II. DEFINITIONS

A. Grievance: A written complaint filed by a faculty or academic staff member against an administrator of the University alleging a violation of University, college, department, school, or unit policy or established practice.

B. Faculty member: A person with a paid University appointment at the rank of professor, associate professor, assistant professor, or instructor, including those with fixed term and visiting status.

C. Academic Staff: A person with a paid University appointment at the rank of academic specialist, lecturer, assistant instructor, research associate, or librarian, including those in a continuing appointment system and those with fixed term and visiting status.

D. Administrator: A person appointed as the head of an administrative unit, school director, department chair, dean, or separately reporting director. The President, the General Counsel and members of the General Counsel's staff, and the FGO are not subject to grievance under this Policy.

E. Policy: A written statement of principles and procedures that govern the actions of faculty, academic staff, and administrators, including written rules, bylaws, procedures, or standards.

F. Practice: Actions taken by the administrator within an administrative or academic unit based on customs or standards in that unit that are usually unwritten but of long-standing duration, and for whose existence the grievant can offer evidence.

G. Violation: A breach, misinterpretation, or misapplication of existing policy or established practice.

III. GRIEVANCE PROCEDURE

A faculty or academic staff member may file a formal grievance against an administrator that alleges a violation of University, college, department, school, or unit policy or established practice.

A. INITIATION OF GRIEVANCE PROCEEDINGS

A faculty /academic staff member who feels aggrieved may discuss his/her complaint in a confidential conference with the Faculty Grievance Official ("FGO"). The FGO shall inform the faculty/academic staff member if the potential grievance falls under the jurisdiction of another University policy rather than this Policy.

B. FILING A GRIEVANCE

To file a grievance, an individual faculty or academic staff member must submit a written, signed statement (the "grievance") to the FGO within 28 days of the date that the grievant knew or should have known of the alleged violation. The grievance must contain the following information:

1. the specific policy or established practice that has allegedly been violated;
2. the date of the alleged violation and the date on which the grievant became aware of the alleged violation;
3. the facts relevant to the alleged violation;
4. the person(s) against whom the grievance is filed (the "respondent"); and
5. the redress sought.

The grievant must also submit any documents that are relevant to the FGO's initial jurisdictional findings pursuant to Section III.D of this Policy.

C. THE RESPONDENT

The FGO will provide a copy of the grievance and any documents submitted with the grievance to the respondent within three (3) days of receipt. The respondent shall submit any relevant documents concerning the FGO's initial jurisdictional findings to the FGO within seven (7) days of receipt of the grievance.

D. JURISDICTIONAL & PROCEDURAL DECISIONS

1. The FGO shall determine whether the following jurisdictional requirements have been met within 14 days of the date that the grievance was filed. The FGO may also seek information from appropriate University office(s) to assist in making these jurisdictional determinations.

   a. Whether the grievant has standing under the Faculty Grievance Policy;
   b. Whether the grievance has been filed in a timely fashion;
   c. Whether the grievance identifies an appropriate respondent(s);
   d. Whether the grievance adequately identifies the existing policies and/or established practices alleged to have been violated;
   e. Whether the grievance contains a reasonably adequate statement of the facts relevant to the complaint; and
   f. Whether any other jurisdictional issue(s) need to be decided in connection with the initiation of the grievance and, if so, an explanation of such issues.

2. The FGO shall inform the parties in writing if each jurisdictional requirement has been met, along with the names of any University offices consulted regarding the jurisdictional decisions. If any jurisdictional requirement has not been met, the FGO shall dismiss the grievance.

3. Each party shall have the right to appeal the FGO's jurisdictional decisions by filing a written statement explaining the reason(s) for the appeal with the FGO within 14 days of the issuance of such decision.

4. If any party files an appeal of the FGO's jurisdictional decision(s), the FGO shall submit the written appeal, together with any written response to the appeal from the parties and a written response by the FGO, to a three-person jurisdictional appeals panel drawn by the FGO from the list of faculty and librarians eligible to serve as members of the University Hearing Board or University Appeals Board. (See Section III.H of this Policy.) The panel shall deliberate and submit to the FGO a written decision (including the basis for its decision) on the appeal within seven (7) days of its convening by the FGO. No faculty member or librarian may serve on more than one jurisdictional appeals panel in any period of seven consecutive years.

5. The FGO shall forward a copy of the jurisdictional appeals panel's decision to the parties within seven (7) days of its receipt from the panel.

E. INFORMAL RESOLUTION

1. The FGO shall confer with the parties and make every reasonable effort to resolve the grievance informally as quickly as possible. Discussions regarding informal resolution are expected to be treated with confidentiality and may not be disclosed or referenced during any subsequent formal proceedings on the grievance. The FGO may recommend that the grievant drop the grievance because it lacks merit or for other just cause. Such a recommendation, however, shall not be binding on the grievant.

2. If the FGO determines that the grievance cannot be informally resolved, the FGO shall so notify the parties in writing. If the grievant wishes to pursue the grievance, the grievant must submit a written request for a formal hearing to the FGO within 14 days of such notice. Failure to submit such a request will constitute a waiver of the faculty member's right to pursue the grievance.

F. AMENDMENTS

A grievant may amend his/her grievance until 28 days before the scheduled date for the formal hearing on the grievance, as long as the proposed amendment concerns the same subject matter as the grievance. The FGO shall decide whether to accept the proposed
amendment, and any jurisdictional issues generated by the proposed amendment, at least 21 days before the scheduled date for the formal hearing. Either party may challenge the FGO's decision by filing a written appeal with the FGO within seven (7) days of the FGO's decision. Such appeals are processed in the same manner as other jurisdictional appeals under Section III.D.4 of this Policy. Any procedural issues (such as submission of new documents) generated by the amendment shall be decided by the hearing panel at the beginning of the hearing.

G. CONSOLIDATION OF GRIEVANCES

If a grievant files two or more separate grievances against the same respondent(s) that raise related allegations or arise from a common set of facts, the FGO may consolidate such grievances into one grievance to be heard by a single panel. If a grievant files two or more separate grievances concerning different issues and the grievances are not consolidated, such grievances will normally be processed and heard sequentially in chronological order determined by the date on which the initial grievance was filed. Separate grievances filed by different grievants that involve related allegations or arise from a common set of facts may also be consolidated.

H. GRIEVANCE PANEL COMPOSITION

1. A University Hearing Board and University Appeals Board shall be established from which hearing panels shall be selected.

2. All faculty with appointment in the tenure system, librarians and other academic staff with appointment in a continuing appointment system, and full-time fixed-term faculty who have served at least three consecutive years and are engaged in the academic activities of the University on a regular basis are eligible and expected to serve as members of the University Hearing Board or University Appeals Board. No faculty/academic staff member or librarian may serve on more than one hearing panel in any period of seven consecutive years. At the start of each academic year, the Academic Human Resources Office will provide the FGO with a list of all faculty, academic staff, and librarians eligible to serve on these Boards.

3. A hearing panel shall consist of five members of the University Hearing Board or University Appeals Board, as appropriate, who are selected randomly by the FGO. Hearing panels shall serve throughout an entire proceeding.

4. The FGO shall take necessary precautions to avoid any conflict of interest on the part of the hearing panel's members. No member of the hearing panel shall be from the same department(s) (or college in the case of non-departmental colleges) as the grievant or respondent.

5. A hearing panel selected for a grievance involving the denial of reappointment or tenure in the tenure system shall be comprised solely of tenured faculty members. A hearing panel selected for a grievance involving the denial of promotion to full professor shall be comprised solely of tenured faculty who hold the rank of full professor.

6. Each hearing panel shall have a Presiding Officer selected by the FGO from a list established by the UCFA. The Presiding Officer shall have voice but not a voting member of the hearing panel. The Presiding Officer shall apply the rules of procedure consistent with the guidelines stated in Section III.I of this Policy.

7. The FGO shall notify each party of the names of the Presiding Officer and five members of the hearing panel. Within seven (7) days of that notice, either party may submit a written challenge to the presiding officer or any member of the hearing panel for cause. The challenge must explain the cause for removing the Presiding Officer or hearing panel member. The Presiding Officer shall determine if there is cause to dismiss the challenged member of the hearing panel and select another member. In addition, each party shall have two peremptory challenges. The FGO shall notify the parties of any replacement Presiding Officer or members of the hearing panel. Either party may submit a challenge for cause to any replacement Presiding Officer or member of the hearing panel to the FGO within three (3) days of that notice.

8. If a hearing panel loses two or more of its members during the course of a hearing, the hearing shall be terminated, and a new panel selected.

I. GRIEVANCE HEARINGS: PROCEDURES

1. Hearings shall be scheduled as expeditiously as possible and with due regard for the schedule of both parties. Grievances involving faculty/academic staff who hold academic year (AY) appointments will normally not be held during summer semester unless the faculty/academic staff member has a summer appointment. On the rare occasion when a party fails to respond to repeated attempts to schedule a hearing or unreasonably delays the scheduling of a hearing, the Faculty Grievance Office will schedule the hearing for the first date available to the panel members and the other party.
2. The FGO shall convene the hearing panel and shall be present during all formal proceedings. The FGO shall provide written notice of the time and place of the hearing, the names of counsel, the names of any witnesses, and copies of any documents submitted by the parties and deemed relevant by the FGO, to each party at least seven (7) days before the hearing.

3. The hearing shall be conducted in good faith and must be completed within 14 calendar days unless the FGO determines that an extension of time is necessary.

4. All hearings shall be recorded. A party may request and obtain a copy of the recording from the FGO.

5. Hearings shall be closed unless the parties agree otherwise.

6. The privacy of confidential records used in the hearing shall be respected.

7. All parties may present their cases in person and may call witnesses on their behalf. The names of witnesses must be provided to the FGO at least seven (7) days prior to the hearing date.

8. A party may elect not to appear, in which event the hearing will be held in his or her absence. Absence of a party shall not be prejudicial to the case.

9. All parties are entitled to counsel of their choice. The name of counsel must be provided to the FGO at least seven (7) days prior to the hearing date.

10. Any party or counsel shall be entitled to ask pertinent questions of any witness or the other party at appropriate points in hearings. The Presiding Officer shall determine what questions are pertinent.

11. The grievant bears the burden of proving that there has been a violation of policy or established practice. A hearing panel shall decide whether the preponderance of the evidence supports the allegations made by the grievant.

12. Hearing panels shall resolve any procedural issues raised by the parties, after providing each party the opportunity to be heard on such matters. However, neither party may challenge the FGO’s initial jurisdictional findings made pursuant to Section III.D of this Policy. The FGO shall distribute all documents submitted by the parties concerning procedural issues to the hearing panel, and shall include such documents in the grievance record.

13. Hearing panels may consider evidence submitted by the parties concerning the relative credentials of other faculty members in determining the merit of grievances involving salary, appointment, re-appointment, or promotion.

14. Hearing panels shall report their findings and recommendations in writing within 21 days of the completion of the hearing to the FGO, who shall forward them to the grievant, the respondent, their counsel, the Provost, or the President, as appropriate, and to the administrator who is the respondent’s immediate supervisor. The hearing panel’s report is advisory to the Provost and does not bind the Provost to a particular decision.

15. When a hearing panel sustains an allegation made in a grievance, it shall recommend appropriate redress consistent with existing policies, procedures, and practices.

16. The Provost shall decide the grievance, in writing, within 28 days of receipt of the hearing panel’s findings and recommendations.

17. All parties shall be notified in writing of their right to appeal by the FGO when a copy of any decision is forwarded to the parties.

Footnotes:

1 If a grievance is filed against the Provost personally, a hearing will be held pursuant to Section III.I of this Policy. The finding(s) and recommendation(s) of the Hearing Panel will be forwarded to the President for decision instead of to the Provost. The President’s decision will be final and not subject to appeal.

2 This Policy and its grievance procedures may not be utilized by faculty or academic staff who are covered by a collective bargaining agreement.

3 References to days in this document are to calendar days. If a deadline contained within this Policy falls on a weekend or University holiday, the deadline will be extended to the next business day on which the University is open for business.

4 The FGO may waive or extend the time limits specified in this Policy for good cause or by mutual agreement of the parties. “Good cause” includes, but is not limited to, circumstances outside of a party’s control, such as illness, approved leave of absence, or extended travel for University business. Even with a showing of good cause, time limits will generally not be extended beyond an additional 28 days.

5 As part of the initial jurisdictional determination, the FGO shall determine whether the policy specified in the grievance applies to the named respondent.

6 Notices provided under this Policy will be delivered to the campus address for both the grievant and respondent unless either party notifies the Faculty Grievance Office in writing that an alternate address should be used.

7 The term “hearing panel” in this section is used to refer to either the initial grievance hearing panel or any subsequent appeals hearing panel.

8 A faculty member or librarian who also holds an appointment as an Administrator is not eligible to serve as a presiding officer or as a member of the
University Hearing Board or University Appeals Board.

9 Faculty/librarians who are on a sabbatical or other approved leave of absence are excused from service on the University Hearing Board and University Appeals Board for the duration of the leave.

10 The standard the Presiding Officer shall follow in ruling on challenges is whether, in light of the challenged person's knowledge of the case or personal or professional relationships with a party, the challenged person would be able to fairly and impartially hear the case and to render a fair and impartial judgment.

11 If the challenge is to the Presiding Officer, the challenge shall be decided by the FGO.

12 "Preponderance of the evidence" means that the existence of the fact in issue is more probable than not. The "preponderance" of the evidence standard would be met where the members of the hearing panel find that the evidence supporting at least one of the allegations in the grievance is more convincing than the opposing evidence.

13 The FGO shall forward the Provost's decision to the parties, their counsel, and the members of the hearing panel within three (3) days of its receipt.

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