



Handbook of Operating Procedures

Section: 6.2.8
Originally Approved: 10/05/1990
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Last Reviewed:
Page: 1 of 10

FACULTY GRIEVANCE

A. Purpose

It is the purpose of this policy to provide a timely, efficient, and equitable method for resolving faculty complaints arising out of some condition or aspect of the employer-employee relationship.

B. Scope

The Faculty Grievance procedure does not apply to:

1. Adverse actions or decisions that result from procedures provided for in The University of Texas System Board of Regents' *Rules and Regulations* [Series 31008, Termination of a Faculty Member](#), or [Series 31003, Abandonment of Academic Positions or Programs](#).
2. Decisions for which an appeal is provided pursuant to Regents' *Rules* [Series 31008, Section 6](#).
3. Decisions or actions for which an appeal is provided by the [Regents' Rules](#), the approved provisions of The University of Texas-Pan American [Handbook of Operating Procedures](#), or other approved policies or procedures of The University of Texas System.

C. Definitions

For the purpose of this document the following definitions will apply:

1. A faculty member is a full-time or part-time employee of the University holding academic rank.
2. A working day is defined in terms of the faculty member's academic year employment requirements. Holidays, weekends, and vacation periods shall not constitute working days. Summer sessions and intersessions shall constitute working days only when the faculty member has been appointed to provide services during these periods.
3. An appeal is a request by a faculty member for review of a grievance decision by the next higher level of review.
4. For the purpose of this policy, Department Chairs and Program Directors are considered administrators or supervisors.



Handbook of Operating Procedures

Section: 6.2.8
Originally Approved: 10/05/1990
Last Amended: 05/11/1998
Last Reviewed:
Page: 2 of 10

FACULTY GRIEVANCE

D. Informal Grievance Process

Faculty members have the right to present, in person or through a representative, any concern or dissatisfaction with an administrative decision or action that affects the faculty member and is related to their employment. Normally, such a concern or dissatisfaction can be resolved through frank and open discussions based upon good faith and mutual respect. Therefore, a concern or dissatisfaction initially must be voiced by means of the informal grievance process and must first be addressed to the administrator or supervisor whose actions are in question.

1. The informal grievance process begins when a faculty member (Grievant) requests, either orally or in writing, to meet with the administrator or supervisor (Respondent) who made the decision or took the action that is the subject of the grievance. It is the responsibility of the Respondent to schedule this requested meeting, if possible within ten working days after receipt of the Grievant's request, at a time that is mutually convenient. In this instance, and in all other instances when a timeline is specified in this policy, extenuating circumstances may legitimately be expected to delay response time.
2. During the scheduled meeting a "good faith effort" should be made to reach a mutually agreeable resolution.
3. Should the Grievant request a written summary of the meeting, including any mutually agreed upon resolution, it is the responsibility of the Respondent to draft such a written summary within ten working days of the meeting. Where such a written summary report is requested, this summary is not finalized until it has received the signatures of both the Grievant and the Respondent.
4. Should the informal grievance process be concluded unsuccessfully, either because there has been no mutually agreed upon resolution or because a requested summary report cannot be finalized for some other reason, the Respondent will ensure that the faculty member is informed of the procedures for filing a formal grievance.

E. Formal Grievance Process

The formal grievance can begin only if the informal grievance process has been concluded unsuccessfully.

1. The formal grievance process must be initiated at the original level within ten working days after the conclusion of the informal grievance process. The Grievant will submit a written statement of grievance and all supporting documentation to the Respondent who



Handbook of Operating Procedures

Section: 6.2.8
Originally Approved: 10/05/1990
Last Amended: 05/11/1998
Last Reviewed:
Page: 3 of 10

FACULTY GRIEVANCE

must make a written response to the Grievant within ten working days. Once the formal grievance process begins, all appeals and proposed resolutions must be documented in writing. Submission of a grievance appeal to the next level shall not occur until the formal process at the initial filing level is completed.

2. If a grievance proceeds beyond the initial level, all materials including the statement of grievance, documentation, and the written decision at the initial level and each subsequent level shall be placed in a grievance folder and forwarded to the next higher administrative level by the Grievant. At each level of appeal the Grievant and the Respondent are furnished with a written copy of the grievance decision. When a grievance is resolved, the grievance folder is filed in the office of the Provost/Vice President for Academic Affairs (VPAA).
3. If the written decision of the Respondent, which usually starts the formal grievance, is deemed unsatisfactory by the Grievant, the Grievant may appeal the decision to the next higher administrator until it has been presented to the Provost/VPAA. The administrator to whom the appeal is presented sends a copy of the grievance folder to the Respondent. Submission of the appeal must be made within ten working days following formal notification of the decision that is the subject of the appeal. A written decision shall be made at each administrative level within ten working days following receipt of the grievance materials. If the Respondent (or an administrator at a later stage in the grievance appeals process) fails to respond to the grievance within ten working days, the Grievant will then submit the grievance folder to the next administrative level. If the Grievant has not appealed to the next administrative level within ten working days after the decision at the last administrative level, the decision of the last administrator will be final and the grievance cannot be considered by a University Grievance Committee.
4. At every level of appeal copies of materials or other evidence presented by one party shall be made available in a timely manner to the other by the person considering the appeal.
5. At every level of appeal the person considering the appeal may attempt mediation.
6. The decision of the Provost/VPAA is final unless the grievance meets the requirements for review by a University Grievance Committee.
7. A faculty member may not file more than one grievance on any single administrative decision or action.



Handbook of Operating Procedures

Section: 6.2.8
Originally Approved: 10/05/1990
Last Amended: 05/11/1998
Last Reviewed:
Page: 4 of 10

FACULTY GRIEVANCE

F. Review by a University Grievance Committee

1. A Grievant who is unwilling to accept the decision of the Provost/VPAA may seek review by a University Grievance Committee (UGC) within ten working days after receiving the decision of the Provost/VPAA by filing the following documents with the President.
 - a. The grievance folder from the office of the Provost/VPAA.
 - b. A written statement of the specific facts that the Grievant contends to establish that the administrative decision or action that is the subject of the grievance:
 - i. was not made in substantial compliance with established University policies or procedures; or
 - ii. has no rational basis, or
 - iii. was based upon reasons that are unlawful under the state or federal constitution, laws, or court decisions.
 - c. Notice of whether the Grievant will be represented by an attorney or other individual before the UGC and the name and address of such person.
2. The documents filed with the President pursuant to Section F.1. shall be the basis for any review by a UGC. Copies of such documents shall be forwarded to the Respondent who made the decision or took the action that is the subject of the grievance, the Grievant's dean, and the Provost/VPAA.
3. The President or the President's delegate shall review the documents filed by the Grievant and determine whether the grievance qualifies for review by a UGC. In order to qualify for review by a UGC it must be determined that the facts alleged in the statement required by Section F.I.b., if proven by credible evidence, support a conclusion that the contested decision or action:
 - a. was not made in substantial compliance with established University policies or procedures; or
 - b. has no rational basis; or
 - c. was based upon reasons that are unlawful under the state or federal constitution, laws or court decisions.



Handbook of Operating Procedures

Section: 6.2.8
Originally Approved: 10/05/1990
Last Amended: 05/11/1998
Last Reviewed:
Page: 5 of 10

FACULTY GRIEVANCE

If the President or the President's delegate determines that one or more of these criteria have been met, a UGC shall be selected and the documents filed pursuant to Section F.1 shall be forwarded to the UGC.

G. University Grievance Committee Composition

1. The Provost/VPAA, the Grievant, and the Respondent shall oversee the selection of a UGC. A separate UGC shall be selected for each grievance.
2. The UGC shall be composed of five members: four faculty and one dean.
 - a. The four faculty members shall be drawn by lot from the University's tenured faculty members.
 - b. The dean shall be drawn by lot from the university's deans. The dean from the college in which the grievance occurred shall not be permitted to consider that grievance.
 - c. No more than two faculty members shall be drawn from any one school/college/division.
 - d. No member of the UGC shall have administrative authority over another member.
3. A faculty member may not be required to serve on the UGC more than once every three years.
4. Members of the UGC who believe that he or she cannot serve with fairness and objectivity may disqualify themselves. Replacement will be selected in the same manner as the original member.
5. The UGC shall select one of its members as Chair.

H. Prehearing Procedures

1. The UGC Chair will notify the Grievant and Respondent of the identity of the UGC members. The Grievant and Respondent are entitled to challenge the impartiality of any member of the UGC. A challenge must be made in writing to the UGC Chair, must state the facts upon which the challenge is based, and must be submitted at least three working days prior to the date for the hearing before the UGC. The challenged member shall be the sole judge of whether he or she is capable of considering the evidence and reaching a decision with impartiality.



Handbook of Operating Procedures

Section: 6.2.8
Originally Approved: 10/05/1990
Last Amended: 05/11/1998
Last Reviewed:
Page: 6 of 10

FACULTY GRIEVANCE

2. Neither the Grievant and Respondent nor their attorney or other representative (if any) shall contact members of the UGC during the time the grievance is pending except to inquire about procedural matters.
3. The UGC Chair shall consult the Grievant, the Respondent and the UGC members concerning scheduling of the hearing. The Chair will notify the Grievant and Respondent of the date, time, and place for the hearing at least ten working days prior to the hearing date, unless the parties request an earlier hearing date.
4. The date for the hearing may be postponed only for good cause. Requests for postponement must be in writing addressed to the UGC Chair and shall state the reasons for the requested postponement. If the Chair determines that there is good cause for postponement, a new hearing date will be selected.
5. At least five working days prior to the hearing date, the Grievant and the Respondent shall provide each other a list of the names of the witnesses that they intend to have testify together with a summary of their testimony and a copy of each document, record or exhibit that they intend to offer as evidence at the hearing.
6. The Grievant and Respondent shall be responsible for notifying the witnesses who will testify on their behalf of the date, time, and place for the hearing.

I. General Provisions for University Grievance Committee Hearings

1. The UGC Chair shall preside at the hearing and has final authority with respect to all proceedings before the UGC, including the responsibility for ensuring that the grievance hearing is conducted in accordance with this procedure and that the Grievant and Respondent, their attorneys or other representatives (if any), and witnesses conduct themselves in an orderly manner. The Chair should begin the hearing by briefly outlining the hearing procedures and stating that all procedural questions and all objections regarding testimony and exhibits are to be directed to and ruled upon by the Chair.
2. The burden of proof is upon the Grievant to establish by the greater weight of the credible evidence that the decision or action that is the subject of the grievance:
 - a. was not made in substantial compliance with established University policies or procedures; or
 - b. has no rational basis; or



Handbook of Operating Procedures

Section: 6.2.8
Originally Approved: 10/05/1990
Last Amended: 05/11/1998
Last Reviewed:
Page: 7 of 10

FACULTY GRIEVANCE

- c. was based upon reasons that are unlawful under the state or federal constitution, laws, or court decisions
3. An audio tape recording (made at university expense) of the proceedings will be made by a University employee who is qualified to operate the recording equipment. The recording, the documents filed by the Grievant pursuant to Section F.I., and exhibits admitted into evidence during the hearing shall be the official record of the grievance hearing.
4. The Grievant shall have the right to be represented by an attorney or other individual of choice. If the Grievant is represented by an attorney, the Respondent may request representation by an attorney from the U. T. System Office of General Counsel.
5. The Respondent and the Grievant shall have the right:
 - a. to be present at all proceedings whenever any evidence is being presented;
 - b. to examine all documents and other exhibits offered as evidence;
 - c. to testify, to present relevant documents and other evidence, and to present testimony of witnesses and cross-examine each other's witnesses. The UGC members may question witnesses after the Grievant and Respondent have concluded questioning;
 - d. to present an opening statement and an oral or written summary (or both) at the conclusion of the hearing.
6. To avoid issues of invasion of privacy, the hearing will be closed to everyone except the Grievant, the Respondent, their attorneys or other representatives (if any), the UGC, witnesses while testifying, and the University employee operating the recording equipment, unless the Grievant and Respondent agree that the hearing shall be open to the public.
7. In order to be admissible, the documents and testimony offered as evidence must be relevant to issues that are to be decided by the UGC. Generally, evidence is considered to be relevant if it tends to prove or disprove a fact that is at issue. There must be some logical connection between the offered evidence and a fact that is in dispute.
8. Testimony of a witness must be based upon statements personally heard or events personally observed by the witness. Written or recorded testimony of a witness will not be admitted except by agreement of the Grievant and Respondent.



Handbook of Operating Procedures

Section: 6.2.8
Originally Approved: 10/05/1990
Last Amended: 05/11/1998
Last Reviewed:
Page: 8 of 10

FACULTY GRIEVANCE

9. University records and correspondence of University administrators produced in the ordinary course of business shall be admissible if relevant to the subject matter of the grievance.
10. Evidence that is admissible but is merely cumulative of evidence already in the record should be excluded upon a determination by the UGC Chair that additional evidence of the same nature as that already admitted is merely repetitious. It is within the discretion of the UGC Chair to determine when further testimony on an issue becomes a waste of time.

J. Conducting the University Grievance Committee Hearing

1. The UGC Chair shall call the hearing to order and briefly outline the hearing procedures.
2. The Grievant or attorney or other representative (if any) will be given the opportunity to make a brief opening statement explaining the basis for the grievance and what he or she contends the evidence will show.
3. The Respondent or attorney (if any) will be given the opportunity to make a brief statement explaining the basis for the decision or action and what he or she contends the evidence will show.
4. The UGC Chair will request evidence to be presented in support of the Grievant's position. The Respondent or attorney (if any) may cross-examine the witnesses of the Grievant. After questioning by the parties, the UGC members may question a witness.
5. After evidence has been presented on behalf of the Grievant, the UGC Chair will request evidence to be presented in support of the Respondent's position. The Grievant or attorney or other representative (if any) may cross-examine the witnesses of the Respondent. After questioning by the parties, the UGC members may question a witness.
6. After the presentation of evidence has been concluded, a brief statement may be made on behalf of the Grievant and Respondent that summarizes the evidence that was admitted and the conclusions that the UGC is requested to reach on the basis of the evidence. As the party with the burden of proof, the Grievant has the right to address the UGC first and may also make a closing statement after the statement of the Respondent. The Chair shall determine the appropriate time limit for such statements and require that such time limit be observed.



Handbook of Operating Procedures

Section: 6.2.8
Originally Approved: 10/05/1990
Last Amended: 05/11/1998
Last Reviewed:
Page: 9 of 10

FACULTY GRIEVANCE

7. The UGC Chair shall adjourn the hearing. The findings and recommendation of the UGC, based on a majority vote of the members and the official record of the hearing shall be delivered to the President by the UGC Chair within ten working days following the conclusion of grievance hearings. The UGC Chair shall also send a copy of the findings and recommendation and any minority report to both the Respondent and the Grievant at the same time.
8. The President will review the official record and the findings and recommendations of the UGC. Based upon the official record, the President may approve, reject, or modify the findings recommendations of the UGC or may reach different conclusions. The decision of the President shall be communicated in writing to the Grievant and the Respondent and to the UGC within thirty days after receipt of the UGC findings recommendations. The decision of the President is final.

K. Deciding the Issues

1. The UGC shall consider whether the Grievant has proven by the greater weight of the credible evidence that the decision or action that is the subject of the grievance (a) was not made in substantial compliance with established University policies or procedures, or (b) has no rational basis, or (c) was based upon reasons that are unlawful under the state or federal constitution, laws, or court decisions.
 - (a) Failure to comply with established University policies or procedures will not be considered substantial if the administrator who made the decision or took the action in question proves by the greater weight of the credible evidence that the same decision or action would have resulted even if the policy or procedure had been applied or followed.
 - (b) In determining whether a decision or action is without rational basis the UGC may not concern itself with whether the decision or action is wise or whether the UGC agrees with the decision or action. The greater weight of the credible evidence must show that the decision or action is arbitrary and irrational. If reasonable minds could differ as to whether the basis given by the administrator supports the decision or action, it is not arbitrary and irrational.
 - (c) A decision or action is based upon reasons that are unlawful if the greater weight of the credible evidence demonstrates that the decision or action was made because of the faculty member's race, religion, national origin, disability, sex, age, veteran status, protected speech activity, protected right of association, protected report of a violation of the law to an appropriate law enforcement authority, or



Handbook of Operating Procedures

Section: 6.2.8
Originally Approved: 10/05/1990
Last Amended: 05/11/1998
Last Reviewed:
Page: 10 of 10

FACULTY GRIEVANCE

other basis that may be prohibited by the state or federal constitution, laws, or court decisions.

- (d) The UGC is the sole judge of the credibility of a witness. A witness is credible when he or she is believable. In determining the credibility of a witness the UGC may consider the demeanor of the witness, the opportunity of the witness to observe events or to acquire personal knowledge that is the subject of the testimony, any interest that the witness may have in the determination of the issues, or any other factor that is relevant to whether the witness is believable.
- (e) Facts at issue may be proven by direct or indirect evidence. Direct evidence is testimony by a witness who saw the events occur or who heard words spoken that establish the fact in question. Indirect evidence includes testimony of a witness who saw events occur or who heard words spoken that establish a collateral fact or circumstance from which the fact at issue may be logically inferred from common knowledge or experience.

L. Review

This policy shall be reviewed by the Provost/Vice President for Academic Affairs in the Spring Semester of each even-numbered academic year in consultation with the Faculty Senate.