

Section IX
GRIEVANCE POLICY

Professional Personnel Employment Handbook

A. Grievable Issues

This grievance policy does not cover all disputes that may arise out of or relate to Professional Personnel employment. It is intended to address situations where the Professional Personnel alleges that his or her employment is adversely affected by a decision, action or inaction by another employee that is in violation of this Handbook, the Trustees' Policy Manual, or other Trustee-approved policy, or is in violation of a law or regulation, except that grievable issues do not include decisions, actions or inactions that relate to any of the following personnel matters even if a violation of policy or law is alleged: supervisory warnings, disciplinary action, dismissal, nonrenewal, reduction in force, suspension, reassignments of Exempt Personnel to other exempt University positions, Tenure recommendations or decisions, denial of sabbatical leave, evaluations, annual development plans, annual performance reviews, comprehensive development plans, comprehensive evaluations, or post-tenure performance improvement plans and reevaluations, or allegation of violation of the Anti-Discrimination Policy.

Procedures for reporting or appealing actions within these excepted areas are covered within other sections of this Handbook. See:

1. Section II. Anti-discrimination Policy, for complaints of unlawful discrimination or harassment;
2. Section V. Leaves, for denial of sabbatical complaints;
3. Section VI. Evaluations, Tenure, Promotion & Post-Tenure Review, for Faculty complaints regarding decisions on these subjects;
4. Section VII. Evaluation of Exempt Personnel, for Administrator complaints regarding evaluations and performance ratings;
5. Section X. Disciplinary Procedures, for contesting disciplinary actions;
6. Section XI. Termination, for contesting involuntary termination of employment.

B. Eligibility to File a Grievance

The employee must be a current member of the Professional Personnel of the University and must be adversely affected in his or her employment by the alleged violation concerning a grievable issue in order to be eligible to pursue a grievance under this policy. The grievance must be timely filed or eligibility is lost.

C. Informal Resolution

The most satisfactory procedure for resolving grievances is informal discussion between the affected Professional Personnel and appropriate Administrators. It is expected that such discussions will precede the initiation of the formal grievance procedures described below.

D. Grievance and Hearing Committee

1. Optional Use of Grievance and Hearing Committee. As part of the informal resolution process, either the Grievant or the Respondent or both may choose to utilize the Grievance and Hearing Committee to monitor the process; study a specific grievance; assist or counsel the individual; or make judgments or recommendations on the merit of the grievance.
2. Composition of Grievance and Hearing Committee. The Grievance and Hearing Committee is comprised of Professional Personnel who are employees-in-good-standing. No Professional Personnel who are potentially involved in the grievance under consideration as Grievants, Respondents or witnesses, may serve on the Grievance and Hearing Committee for that grievance. The University may have more than one Grievance and Hearing Committee to serve different groups of Professional Personnel. The number of committees, the size of the committees, the method of selection and replacing members, and the function of the committees are to be determined by the President and approved by the Trustees.
3. Committee can not Impede the Formal Grievance Process. Grievance and Hearing Committees are not a part of the formal grievance process and may not interrupt or impede the process. The time limits specified in the formal grievance process may not be modified by the activities or actions of the Grievance and Hearing Committee.

E. Formal Grievance Process

1. Terms and Processes Applicable to Sequential Steps.
 - a. Pursuit of Grievance. Except as specified below, all the steps of the formal grievance process must be followed.
 - 1) Non-response. Failure to timely answer a grievance in writing at any step shall be considered a denial of the allegation claimed in the grievance, effective the last day of the response period. A Grievant must appeal a denial-by-non-response to the next step of

Section IX
GRIEVANCE POLICY

Professional Personnel Employment Handbook

the formal process within the time period allowed or the grievance may be terminated.

- 2) Unsatisfactory Resolution. The Grievant must pursue to the next step within the time period allowed a grievance which has not been satisfactorily resolved or the grievance will be terminated.
 - 3) Termination of grievance for lack of timely appeal. Failure by the Grievant to give written notice of appeal to the next step within the specified time limits shall be regarded as intent not to proceed. The process shall be terminated and the case closed with a written explanation of the lack of timely appeal attached to the case file. This explanation shall be jointly prepared by the persons responsible for the administration of the last active step and the next step.
 - 4) Withdrawal of grievance. A grievance may be withdrawn at any time by the Grievant by filing a written withdrawal with the individual responsible for the step of the process that is active at that time.
- b. Timeliness. Disputes about whether time limits for appeal have been met may be appealed only to the next step in the formal process.
 - c. Precedent. Any settlement, withdrawal, or disposition of a grievance at any step shall not create a binding precedent or necessarily affect the resolution of similar grievances.
 - d. Reducing agreements to writing. Any agreements reached at any step of the formal grievance process must be reduced to writing.
 - e. Approval of agreement. All written agreements approved by the President or at Steps I or II are final, except for those matters for which only the Trustees have or assume final authority.
 - f. The Respondent may not be a Step I or II Administrator. The President shall designate another Administrator in such event.
 - g. Scope of investigation by the hearing officer. As part of a Step III grievance, if the hearing officer finds that the grievance involves a decision for which a different formal University review and recommendation process is prescribed, the hearing officer shall limit the investigation to a

Section IX
GRIEVANCE POLICY

Professional Personnel Employment Handbook

determination of whether the prescribed formal review and recommendation process has been followed.

- h. Representation during the grievance process: The Grievant may select a member of the Professional Personnel, who is not a practicing attorney, to observe and to advise the Grievant at any step during the grievance process. (This is not intended to preclude the grievant from seeking legal counsel at any time.)
- i. Burden of proof. The burden of persuasion rests upon the Grievant with regard to any assertion contained in the Notice of Grievance.
- j. Costs. Cost for the hearing officer procedure, including the recording of the hearing, shall be borne equally by the Grievant and the University except that the Grievant and the University shall each be responsible for expenses incurred at their individual requests during the grievance process, such as the expenses for transcripts, witnesses, and attorneys.
- k. Retaliation. No retaliation shall be taken against a Grievant because of the filing of a grievance in good faith.

2. Sequential Steps.

- a. Step I: Review by Administrator
 - 1) In the event a grievance is not resolved through informal discussion and negotiation, the Grievant may file a formal written grievance using the Notice of Grievance form available through the Human Resources Department. Such written grievance shall be submitted to the Step I Administrator, who is the Administrator below the level of Vice President to whom the Grievant is assigned (e.g. Department Head or Director).
 - 2) The Notice of Grievance must be filed within thirty (30) calendar days of the occurrence giving rise to the grievance or within thirty (30) calendar days of the date on which the Grievant knew or reasonably should have known of such occurrence, whichever is later, or, if the violation grieved is of a continuing nature, at any time. Any grievance not filed in accordance with the time limits specified shall be deemed waived by the Grievant.
 - 3) The first responsibility of the Step I Administrator shall be to

Section IX
GRIEVANCE POLICY

Professional Personnel Employment Handbook

determine whether the grievance is timely filed and whether the allegations stated in the Notice of Grievance conform to the definition of "grievance" and is a proper issue for review. If the Step I Administrator determines that the grievance does not meet these criteria, that Administrator shall give the Grievant written notice specifying the deficiencies of the grievance as submitted. The Grievant then has three alternatives:

- a) To refile the grievance at Step I within another seven (7) calendar days to correct technical deficiencies;
 - b) To file a new grievance at Step I, within time limits based on the new grievance; or
 - c) To appeal the disqualifying decision to Step II.
- 4) The Step I Administrator shall have fourteen (14) calendar days after receipt of the Notice of Grievance to investigate, attempt to resolve the grievance and to respond in writing to the Grievant.
- b. Step II: Review by the President or Designee
- 1) If a satisfactory resolution is not achieved at Step I, the Grievant may, within seven (7) calendar days after receipt of the written response from the Step I Administrator, give notice of appeal to the President who may assign a designee as the Step II Administrator. This written appeal shall include a copy of the Step I Administrator's response(s) and an explanation of why the Grievant is not satisfied with the response at Step I.
 - 2) The Step II Administrator shall have fourteen (14) calendar days after receipt of the appeal to investigate, attempt to resolve the grievance and to respond in writing to the Grievant.
- c. Step III: Review by Hearing Officer
- 1) If a satisfactory resolution is not achieved at Step II, the Grievant may within seven (7) calendar days after receipt of the written response from the Step II Administrator, give notice of request for a hearing to the President.
 - 2) Within fourteen (14) calendar days after receipt of the Grievant's request for hearing, the President or designee shall give to the Grievant a list of three members of the University's hearing officer

Section IX
GRIEVANCE POLICY

Professional Personnel Employment Handbook

- panel.
- 3) The Grievant shall give notice to the President within seven (7) calendar days after receipt of this hearing panel list as to which panel member the Grievant strikes from the list.
 - 4) Within seven (7) calendar days after receipt of the Grievant's strike choice, the President or designee shall strike one name from the list and give the Grievant notice of the remaining person, who will serve as hearing officer.
 - 5) The hearing before the hearing officer will be governed by the following procedures:
 - a) The hearing officer shall set a date for a hearing to be held as soon as practicable and shall give notice of the date, place, and time of the hearing to the Grievant, the Respondent, the President, and the Chair of the Board of Trustees. The proceedings before the hearing officer will be recorded by a court reporter or by an electronic recording device. The hearing officer shall hear relevant testimony and review relevant documents submitted into evidence by the parties and their witnesses.
 - b) Not more than fourteen (14) calendar days after the conclusion of the hearing, the hearing officer shall report findings of fact, conclusions, and recommendations to the Grievant, the Respondent, if any, the President and the Chair of the Board of Trustees.
 - c) The Trustees have the responsibility for disposition of the grievance following receipt of the report of the hearing officer. The Trustees may accept the recommendations of the hearing officer, may honor the claim of the Grievant, may support the initial action of the University, may accept alternative recommendations proposed by the President, or may take such other action as the Trustees deem appropriate. The Trustees shall give notice to the Grievant, the Respondent, if any, and the President within thirty (30) calendar days after receipt of the hearing officer's initial decision as to their disposition of the grievance.
3. Grievance Files. The record of each grievance and its disposition shall be filed with the personnel records of the Grievant.