

Policy **AA-FH-PO6**

Faculty Grievance Procedure

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I. Section 6-751 Nature and Scope of the Procedure

- A. Professional ethics require that problems arising out of administrative decisions or actions affecting the academic standing or conditions of employment of members of the faculty be reviewed and resolved in a fair, efficient, and equitable manner.
- B. The Faculty Grievance Procedure is intended to provide an effective process for the review and equitable resolution of contentions by a faculty member that an administrative decision or action affecting the faculty member has not been made in substantial compliance with established University criteria or procedures; that there is no reasonable basis for the decision or action; or that the decision or action was based upon criteria that are unlawful under the state or federal constitution, laws, or court decision. Only faculty with the rank of Regental Professor, Professor, Associate Professor, Assistant Professor, or Instructor are entitled to present a grievance pursuant to this procedure.
- C. The following administrative decisions or actions are subject to review pursuant to the Faculty Grievance Procedure:
 - 1. a reduction in rank;
 - 2. the denial or withdrawal of a University benefit or privilege;
 - 3. assignment or reassignment of duties;
 - 4. withdrawal or reassignment of the use of University facilities, equipment, or support staff;

5. salary issues;
 6. evaluations of a faculty member's professional performance made by a faculty member, faculty committee or administrator acting pursuant to University policy or procedures;
 7. an appeal permitted by Paragraph G of Subchapter ADM Chapter 6-1300 of the Handbook of Operating Procedures of the University.
- D. 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 Regents' *Rules and Regulations* Rule 31003, except as provided in Paragraph C.7 above;
 2. Decisions that are reviewable pursuant to The University of Texas System Regents' *Rules and Regulations*, Rule 31008; or
 3. Actions or decisions described in Paragraph C. that are reviewable pursuant to procedures provided by the University's Handbook of Operating Procedures or the Rules and Regulations of the Board of Regents of The University of Texas System.
- E. Resort to the Faculty Grievance Procedure is a serious matter. It is the responsibility of all parties to attempt to resolve grievable complaints quickly and at the lowest possible level. A faculty member who believes that he or she has a grievance under this procedure should discuss the matter with the Chair of the Equity Committee of the Faculty Senate. This discussion is not a prerequisite to either the informal consultation or the formal grievance process, but is intended to help the faculty member understand the procedures that must be followed and whether the subject matter of the complaint may be covered by the Faculty Grievance Procedure.
- F. A faculty member has the right of self-representation at any step in the Faculty Grievance Procedure, and may choose to present a grievance through legal counsel or personal representative during the formal stage of the procedure. If, and only if, the faculty member is represented by legal counsel at the formal hearing stage of the procedure may the University administrator be represented by legal counsel from the Office of General Counsel of The University of Texas System at the hearing.
- G. A faculty member shall not be penalized for filing a grievance unless it is determined that the grievance has been filed in bad faith and with malice.

II. **Section 6-752 Informal Consultation**

- A. A decision or action that is subject to this Procedure must be pursued through the Informal Consultation process before it is the subject of a formal grievance. A formal grievance may be filed only after exhausting the Informal Consultation process.
- B. A faculty member affected by a grievable decision or action shall present his or her concerns to the administrator responsible for the decision or action within

90 workdays after the date he or she knew of the decision or action. The administrator must respond within 15 work days after receipt of the grievance, explaining the reasons for the action and the criteria employed. Both parties should enter into these discussions seriously, treating them as an opportunity to settle the matter.

- C. If Informal Consultation with the administrator responsible for the grievable decision or action does not result in a resolution of the matter, the faculty member may, within 30 work days after receiving the administrator's response, elect to discuss the administrator's response with the next higher level of administration, respectively, until it has been submitted to the Provost. If resolution of the matter does not occur at this level, the faculty member may proceed to the Formal Faculty Grievance Procedure. A response shall be provided to the faculty member within 15 workdays at each level.
- D. If the faculty member has not requested discussion of the matter at the next administrative level within 30 work days from the response at the last administrative level, the response of the administrator at that level will stand, and no further informal discussion shall be available and no formal grievance shall be accepted.

III. Section 6-753 Formal Faculty Grievance Procedure

- A. To initiate the Formal Faculty Grievance Procedure, a faculty member who is unwilling to accept the response of the Provost in the Informal Consultation process must, within 30 work days request of the administrator, who made the decision or took the action that is the subject of the grievance, a written explanation of the reasons for the decision or action. The request must be in writing, include the faculty member's specific questions and concerns, and state the resolution or relief sought. The faculty member shall send a copy of the request to the Dean of the academic unit and the Provost. The administrator must make a written response to the request within 15 work days, stating the reasons for the questioned decision or action and explaining the procedures, standards, and criteria used. The administrator shall send a copy of the response to the Dean of the academic unit and the Provost. The Formal Faculty Grievance Procedure may not be pursued if a faculty member leaves the University.
- B. If the faculty member elects, he or she may appeal the response to the President in writing. The appeal must be made within 30 work days of the date of receipt of the administrator's written response. The President shall provide a written response to the faculty member within 30 work days after the date of the faculty member's written appeal. The decision of the President shall be final, and the faculty member will not be entitled to have the decision or action that is the subject of the grievance reviewed pursuant to the Formal Faculty Grievance Procedure.
- C. If the faculty member is unwilling to accept the written response of the administrator and does not choose to appeal to the President, he or she may initiate the Formal Faculty Grievance Procedure within 30 workdays after the date of the receipt of the written response required by Paragraph A. by filing the following documents with the Chair of the Equity Committee:

1. The faculty member's written request to the administrator pursuant to Paragraph A.;
 2. The written response of the administrator under Paragraph A.;
 3. A written statement of specific factual allegations that the faculty member contends establish that the contested decision or action;
 - a. Was not made in substantial compliance with established University criteria or procedures;
 - b. Has no reasonable basis; or
 - c. Was based upon criteria that are unlawful under the state or federal constitution, laws, or court decisions.
 4. Notice of whether the faculty member will be represented by legal counsel or a personal representative in the Formal Faculty Grievance Procedure with the name and address of such person.
- D. The documents filed pursuant to Paragraph C. shall be the basis for all subsequent steps in this procedure. Copies of the documents filed by the faculty member shall be forwarded by the Chair of the Equity Committee to the administrator who made the decision or took the action that is contested, the Dean of the academic unit, and the Provost.
- E. Within 10 work days after receiving the formal grievance, the Chair of the Equity Committee shall convene the Committee to determine whether the complaint is grievable under the Formal Grievance Procedure, that is, to determine whether the facts alleged, if proven by credible evidence, support a conclusion that the contested decision or action (a) was not made in substantial compliance with established University criteria or procedures, or (b) has no reasonable basis, or (c) was based upon criteria that are unlawful under the state or federal constitution, laws, or court decisions. The Committee shall deliberate and shall decide the issue by a majority of those present. If the Committee determines that the complaint is not grievable, the Committee shall dismiss the grievance and notify the faculty member, the administrator, the dean of the academic unit and the Provost that the issue is not grievable and that the matter is closed.
- F. If the grievance is not dismissed, the Equity Committee shall consult with the faculty member and the administrator who made the decision or took the action that is the subject of the grievance and select one of the following alternatives for resolving the issues presented by the grievance:
1. Appoint a mediator who is a tenured member of the faculty but not a current member of the Equity Committee or the academic unit of the grievant or administrator; or
 2. Appoint a five member Faculty Grievance Panel, pursuant to Section 6-755, and notify the parties that the Panel has been selected subject to challenge or recusal.

- G. The Equity Committee may, at its discretion, consolidate the grievances of two or more faculty members who make allegations of the same type against the same administrator and who petition the Committee to have their individual grievances heard by the same mediator or Grievance Panel. In such situations the mediator or Grievance Panel shall make separate findings and recommendations regarding the grievance of each faculty member.
- H. Although the Equity Committee is constrained to act within the rules contained in this Faculty Grievance Procedure, the Committee is expected to report, by a memorandum to the President and the Chair of the Faculty Senate, issues arising from grievances that the Committee feels are not adequately or appropriately addressed by the applicable University rules.

IV. Section 6-754 Mediation

- A. When a grievance is referred to a mediator, the mediator shall have a period of no more than 15 workdays to assist the parties in reaching an acceptable settlement. The mediator shall report the results of the mediation to the Equity Committee. If a settlement acceptable to the parties has not been reached, the mediator shall recommend either: (1) a settlement, (2) the establishment of a Grievance Panel, or (3) that the grievance be dismissed.
- B. Upon receiving the recommendation of the mediator, the Equity Committee shall, within 15 workdays, accept or reject the recommendation and notify the parties and the President of its decision.
 - 1. If the Committee accepts the recommendation of the mediator for a settlement of the grievance, it shall forward the recommendation and the report of the mediator to the President for final action.
 - 2. If the Committee accepts the recommendation of the mediator to appoint a Grievance Panel, or rejects a recommendation to settle, or to dismiss the grievance, it shall proceed to appoint a Grievance Panel.
 - 3. If the mediator's recommendation to settle or to appoint a Grievance Panel is rejected, or a recommendation to dismiss the grievance is accepted, the grievance shall be dismissed and the matter is closed.

V. Section 6-755 Grievance Panel Selection

- A. In order to be eligible to serve as a member of a Grievance Panel, a faculty member must:
 - 1. Be a full-time tenured member of the faculty;
 - 2. Not be appointed to an administrative position of program head or above;
 - 3. Not be a member of the Equity Committee of the Faculty Senate;
 - 4. Not be a faculty member of the same academic unit as the faculty member who files a grievance.

- B. A Grievance Panel shall consist of five tenured faculty members. The members shall be chosen by the Equity Committee by drawing names one at a time, from each of the university units (College of Business, College of Engineering, College of Liberal Arts, College of Science, Schools and Centers), at random from a pool of all eligible faculty members. The Panel, at its first meeting shall appoint a Chair of the Panel. The Chair shall notify the parties to the grievance of the membership of the Panel.
- C. Each party to the grievance may challenge the impartiality of any member of the Grievance Panel. A challenge for impartiality must be in writing and must state the facts on which the challenge is based. Each challenged member shall be the sole judge of whether he or she is capable of considering the evidence and determining the facts with impartiality. Each party shall also have two preemptory challenges to members of the Panel. Preemptory challenges or challenges for impartiality must be submitted to the Chair of the Panel within 15 work days after the appointment of the Grievance Panel. Parties are cautioned against frivolous use of the right of challenge.
- D. A member(s) of a Grievance Panel may request to be excused from service for reasons of hardship or for conflict of interest. Requests to be excused must be in writing, must state the reasons upon which the request is based, and must be submitted to the Chair of the Equity Committee within 10 work days after notification of appointment to the Panel.
- E. When a member(s) of a Grievance Panel is excused at their request or as the result of a challenge, the vacancy(ies) will be filled in the same manner as the original appointment(s).

VI. Section 6-756 Grievance Panel Pre-Hearing Procedures

- A. After the Grievance Panel is constituted, the Chair will consult with the parties to the grievance and the members of the panel and schedule the grievance hearing at the earliest practical date. The Chair will notify the parties to the grievance of the date, time, and place for the hearing at least 10 work days prior to the hearing date.
- B. The date for the grievance hearing may be postponed only for good cause. Requests for postponement must be in writing addressed to the Chair of the Grievance Panel and shall state the reasons for the requested postponement. If the Panel determines that there is good cause for postponement, a new hearing date shall be selected and the parties to the grievance notified.
- C. At least 5 work days prior to the date for the hearing, the parties to the grievance shall each furnish the other the names of the witnesses that they intend to have testify; a summary of their expected testimony; and a copy of each document, record, or exhibit that they intend to offer as evidence at the hearing.
- D. The Equity Committee shall provide the Grievance Panel with copies of the documents filed by the faculty member pursuant to Section 6-753, C.
- E. The Parties to the grievance shall be responsible for notifying any witnesses who will testify on their behalf of the date, time, and place for the hearing, and

shall inform any witnesses that they should inform the Chair of the Grievance Panel whether he/she intends to testify before the panel.

- F. The University shall provide a faculty member with copies of University documents that the faculty member intends to offer as evidence in the hearing before the Grievance Panel unless such documents contain information that is made confidential by state or federal law, regulation or court order.
- G. University employees who are requested to be witnesses at a grievance hearing are encouraged by the University to testify regarding matters within their personal knowledge.

VII. Section 6-757 Grievance Panel Hearing Procedures

- A. The Chair of the Grievance Panel shall preside at the hearing and has final authority with respect to all proceedings before the Panel, including the responsibility for ensuring that the grievance hearing is conducted in accordance with this Procedure and that the parties to the grievance, their legal counsel or personal representative, and witnesses conduct themselves in an orderly manner. The Chair should begin the hearing by briefly outlining the hearing procedures and informing the parties that all procedural questions and all objections regarding testimony and exhibits are to be directed to and ruled on by the Chair.
- B. All proceedings before the Grievance Panel will be audio-tape-recorded with equipment provided by the University. This recording, the documents filed by the faculty member pursuant to Section 6-753, C, and exhibits admitted into evidence during the hearing, shall be the official record of the grievance hearing. The parties to the grievance may have access to the official record and will be furnished a copy at cost.
- C. To avoid issues of invasion of privacy, the hearing should be closed to everyone except the parties to the grievance, their legal counsel or personal representative, the Grievance Panel, and witnesses while giving testimony.
- D. Witnesses should testify from personal knowledge and without regard to what other witnesses may say, therefore, the Chair will require all potential witnesses except the parties to the grievance to leave the hearing room until such time as they are called to testify and to leave the room after testifying. Witnesses called by one party may be cross-examined by the other party. The Chair and members of the Grievance Panel may ask questions of a witness after the parties have concluded their examination.
- E. In the hearing before the Grievance Panel, the following order applies:
 - 1. The faculty member, his or her legal counsel or personal representative, may make a brief statement explaining the basis for the grievance and what he or she contends that the evidence will show;
 - 2. The administrator or legal counsel may make a brief statement explaining the basis for the challenged decision or action and what he or she contends that the evidence will show;

3. The faculty member, legal counsel or personal representative, may call witnesses to testify and may offer documentary evidence;
 4. After testimony of witnesses and all documentary evidence have been presented by the faculty member, the administrator or legal counsel may call witnesses to testify and may offer documentary evidence;
 5. Each party may call witnesses and/or offer documentary evidence in rebuttal to the testimony of witnesses or documentary evidence of the other party;
 6. After the presentation of evidence has been concluded by both parties, each party may make a brief statement that summarizes the evidence that was admitted and the conclusion(s) that the Grievance Panel is requested to reach on the basis of that evidence. As the party with the burden of proof, the faculty member has the right to address the Panel first and may also make a closing statement after the statement of the administrator. The Chair shall determine the appropriate time limit for the statement by each party and shall require that the time limit be observed.
- F. The Chair will adjourn the hearing and, upon the basis of the evidence admitted at the hearing, the Grievance Panel will make a written report of its findings and recommendation to the President within 10 work days after the hearing is adjourned. The findings and recommendations of the Panel shall be limited to the issues contained in the documents filed by the faculty member pursuant to Section 6-753, C. The Grievance Panel may submit majority and minority findings and recommendations as appropriate.
- G. Although the Grievance Panel is constrained to act within the rules contained in this Faculty Grievance Procedure, the Panel is expected to report by separate memorandum to the President and the Chair of the Faculty Senate issues arising from the grievance that they believe are not adequately or appropriately addressed by the applicable University rules.
- H. Each member of the Grievance Panel is required to be in attendance throughout the hearing. After the hearing has begun, any member who is unable to continue in attendance because of illness or extenuating circumstances shall not participate further in the hearing or other proceedings under this Procedure. Provided at least three Panel members continue to serve, the proceedings under this Procedure shall continue to completion.

VIII. Section 6-758 Admissibility of Evidence

- A. The Chair of the Grievance Panel must rule upon objections that are made to the admissibility of evidence offered by the parties.
1. In order to be admissible, the documents or testimony offered must be relevant to issues that are to be decided by the Grievance Panel. Generally, evidence is 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. Upon objection, evidence that is not relevant should be excluded.

2. Testimony of a witness should be based upon statements personally heard or events personally observed by the witness. Fundamental fairness requires that a witness offered by a party be subject to cross-examination by the other party in order to determine whether the witness is testifying from personal knowledge and to test the credibility of the witness. If the knowledge of a witness regarding statements attributable to a person or the occurrence of an event is based upon something other than what the witness personally heard or observed, testimony of the witness should be excluded upon objection. Written or recorded testimony of a witness will not be admitted except by agreement of the parties to the grievance.
3. University records and correspondence of University administrators produced in the ordinary course of business shall be admissible, subject to objections as to relevance.
4. Evidence that is admissible but is merely cumulative of evidence already in the record should be excluded by the Chair upon objection or upon determination by the Chair that additional evidence of the same nature as that already admitted is merely repetitious. It is within the discretion of the Chair to determine when further evidence or testimony on an issue becomes a waste of time.
5. It is the responsibility of the Panel to make fair and impartial findings and recommendations to the President. When irrelevant evidence is offered without objection, the Panel should recognize it as such and disregard it in its deliberations.

IX. Section 6-759 Burden of Proof and Criteria for Consideration of Evidence

- A. The faculty member has the burden of going forward with the evidence at the grievance hearing and has the burden of proving by the greater weight of the credible evidence that (a) the decision or action that is the subject of the grievance was not made in substantial compliance with established University criteria or procedures; or (b) that there is no reasonable basis for the decision or action; or (c) that the decision or action was based upon criteria that are unlawful under the state or federal constitution, laws, or court decisions.
 1. Failure to comply with established University criteria 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 omitted criteria or procedure had been applied or followed.
 2. In determining whether a decision or action is without a reasonable basis the Panel may not concern itself with whether the decision or action is wise or whether the Panel agrees with the decision or action. The Panel must decide if the greater weight of the credible evidence shows that the decision or action is unreasonable.
 3. A decision or action is based upon criteria 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 other basis that may be prohibited by the state or federal constitution, laws, or court decisions.

- B. The Grievance Panel is the sole judge of the credibility of a witness. In determining the credibility of a witness the Panel may consider 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.
- C. 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.

X. Section 6-760 Review and Decision of the President

- A. The findings and recommendation of the Grievance Panel (majority and minority if appropriate), the tape recording of the grievance hearing, the documentary evidence admitted during the hearing, and the documents filed by the faculty pursuant to section 6-753, C, shall constitute the official record of the grievance hearing and will be forwarded to the President by the Chair of the Panel within 10 work days after the grievance hearing is adjourned.
- B. The President will review the official record and the findings and recommendations of the Grievance Panel. Based upon the official record, the President may approve such findings and recommendations, may make modifications, or may make different findings and conclusions. Within 20 work days after receipt of the official record of the grievance hearing and the findings and recommendations of the Grievance Panel, the President will make findings of fact based upon the official record and render a decision on the issue(s) that are the subject of the grievance hearing. The decision of the President is final and will be delivered to the parties to the grievance, the Chair of the Grievance Panel, the Chair of the Equity Committee, the Chair of the Faculty Senate, the Dean of the academic unit, and the Provost.

XI. Section 6-761 General Provisions

- A. Any time limit provided for in this Procedure may be extended by written agreement of the parties to the grievance filed with the appropriate Chair at least 2 work days prior to the expiration of the applicable time limit.
- B. If a faculty member who has filed a grievance fails to pursue the grievance to the next appropriate step within the time limit prescribed by this Procedure or fails to file a written agreement extending the time for taking such action, the faculty member shall be presumed to have accepted the decision that has been

made at the previous stage of the Procedure and no further consideration shall be given to the grievance.

- C. If a faculty member does not receive a response to a grievance within the time limit prescribed by this Procedure or within an agreed extension to such time limit, he or she may proceed to pursue the grievance to the next step of the Procedure.
- D. Resort to this Procedure does not prevent a faculty member from pursuing the issues of his or her grievance in any non-University proceeding; however, if a faculty member seeks resolution of the issues in a non-University forum he or she shall not be entitled to file a grievance under this Procedure or to pursue a grievance under this Procedure that was filed prior to presenting such issues to a non-University forum for resolution.
- E. The term "work day" means a day -- Monday through Friday -- on which classes or examinations are scheduled on the official academic calendar of the University.