

II-4.00(A) UNIVERSITY OF MARYLAND POLICIES AND PROCEDURES GOVERNING FACULTY GRIEVANCES

Passed by the Campus Senate, April 23, 1990, and approved by the President, December 13, 1990. Amended March 4, 2002. This procedure replaces all faculty grievance procedures previously in effect at all administrative levels of the University of Maryland College Park.

I. INTRODUCTION

A. Purpose

Legitimate problems, differences of opinion, conflicts, or complaints sometimes arise in the relationship between the University, as an employer, and its faculty. Both the faculty member with a grievance and the University benefit when the University responds to grievances promptly and fairly. This grievance procedure attempts to handle grievances as informally as possible and at a level in the University structure that is accessible to faculty members. The procedure also attempts to handle grievances in a timely, consistent, and simple manner. A faculty member may file a grievance under this code or under the Code on Equity, Diversity, and Inclusion, but the same grievance cannot be filed under both codes.

B. Who May File a Grievance?

All persons with faculty status irrespective of their administrative duties or assignments at the time of the action or inaction prompting the grievance may use this grievance procedure. The faculty members covered by the Grievance Procedures are all those whose titles are in the University of Maryland Policy on Appointment, Promotion and Tenure Policy II-1.00(A) part I and in the University System Policy II-1.00, whether that person is full-time or part-time, as long as the faculty appointment is the person's primary position at the University of Maryland.

Grievances by more than one faculty member may be put together in a single grievance if each faculty member signs the grievance and the material actions or inactions and issues are substantially the same for each.

C. What is a Grievance?

Faculty members may file a grievance under this procedure for any action or inaction by an academic administrator that they believe is unfair, discriminatory, or improperly reached. Grievance issues include but are not limited to academic freedom, salary, assignments, and the nature and conditions of a faculty member's work. Grievances cannot be filed against written campus and System policies per se.

However, no complaint shall be reviewed under these faculty grievance procedures if:

1. The complaint pertains to a subject that is reviewable under, or is specifically excluded from review by any other System or institutional policy;
2. The complaint pertains to an official policy, regulation, or procedure of the System or the institution; a decision or action by the Board of Regents, the Chancellor, or the President; or any matter the remedy for which would contravene or interfere with any such official policy, regulation, procedure, decision, or action;
3. The complaint pertains to broad areas of the fiscal management, staffing, or structure of the University of Maryland System or constituent institutions; or

4. The resolution of the complaint is not under the control of the institution and/or of the University System.

D. The Faculty Ombuds Officer

There shall be created at the University of Maryland at College Park the position of Faculty Ombuds Officer, a neutral and impartial officer to provide confidential and informal assistance to faculty and administrators in resolving concerns related to their work. Operating outside ordinary administrative structure, the Faculty Ombuds Officer shall serve as a counselor, fact-finder, mediator, and negotiator, but not as an advocate for any party to a dispute.

The Faculty Ombuds Officer shall serve all faculty and academic administrators. He or she shall attempt to resolve disputes informally before they enter formal grievance channels, and shall advise those who seek information about what constitutes a grievance and what the grievance procedures are. The Officer shall have access to suitable legal counsel, prepare a yearly report, and offer recommendations for policy change to the Campus Senate and the President.

The Faculty Ombuds Officer shall be appointed by the President following a search conducted by a committee jointly appointed by the Faculty Grievance Panel and the President. Removal shall be by mutual consent of the President and a majority of the elected faculty members of the Executive Committee of the Senate.

II. PROCEDURES

A. Definitions

A grievance allegation is an informal statement of a grievable issue presented to a respondent. It is based on the same standards as a grievance complaint, but seeks a remedy through the process of private discussion and negotiation rather than formal grievance.

A grievance complaint is a formal written statement of a grievable issue using a prescribed form available from the Faculty Ombuds Officer.

A grievant is the faculty member or members initiating a grievance allegation or grievance complaint.

The respondent is the person or persons responsible for making the decision about which the grievant is complaining.

An academic administrator is a vice president, dean, department chair, or director of an academic unit or designee.

Unfair in Section I.C. shall mean arbitrary, capricious, vindictive, lacking in justifiable cause or basis in official policy, discriminatory with respect to treatment accorded to equals, or excessive in relation to what would be a reasonable and available alternative course of action.

Discriminatory in Section I.C. shall mean disparate treatment on the basis of unacceptable criteria (e.g., race, ethnicity, gender, age, religion, sexual preference, etc.).

Improperly reached in Section I.C. shall mean the decision was reached without the consultations required by departmental or college regulations prior to the making of such decisions, or unilaterally without approval of higher administrators where such approval is required.

A mediation agreement is a formal written statement agreed upon by both the grievant and respondent that serves to resolve a grievance.

The Faculty Ombuds Officer has central management responsibility for mediation and for the administration of these procedures (Section I.D.).

The Faculty Grievance Panel is composed of all faculty members of the College Park Senate, excluding ex officio members.

Days in the calendar of complaint procedures shall mean calendar days excluding Saturday, Sunday, and days on which the Campus is officially closed.

B. Information about Procedures

The Faculty Ombuds Officer is responsible for providing information regarding the negotiation, mediation, and adjudication procedures and their relation to other policies and procedures of the University. This officer shall explain, in response to inquiries by faculty members, the conditions for using the various steps of the grievance procedure. The grievance procedure calendar allows seventy-five (75) days in which to pursue a negotiated settlement and an additional seventy-five (75) days within which to file a grievance complaint. The grievance procedure calendar excludes the period from June 1 to August 16 because of the possibility that one of the parties to a grievance may go away for the summer. Grievants will not be reprimanded or discriminated against in any way for initiating an inquiry, allegation, or complaint. The same confidentiality accorded to peer review processes should be observed in the grievance procedure. A "need to know" standard should apply to the confidentiality accorded to grievance procedures and those involved in such procedures who have a legitimate interest in resolving the grievance.

1. Negotiation. As a first step in seeking relief and before a grievance complaint is filed, the grievant has the option of attempting, either with or without the advice of the Faculty Ombuds Officer, to resolve the dispute through negotiation privately entered into with the respondent whose actions or inactions give rise to the allegation. If both parties agree, administrators higher in rank may be involved in the effort to resolve the dispute through informal discussion and negotiation.

The negotiation stage is initiated by an informal grievance allegation and may proceed over a period not to exceed seventy-five (75) academic calendar days after the action or inaction prompting the grievance occurs or after the faculty member first learns of such action or inaction, whichever is later. Such action or inaction may be the latest in a long standing pattern or practice, in which case the pattern may be considered as part of the evidence of the grievance. If the grievance in negotiation is settled to the satisfaction of all parties, no formal record need be filed with the Faculty Ombuds Officer, but a written record of such agreement may be so filed at the request of the grievant. If the grievance in negotiation is not so settled, and the grievant wishes to proceed to mediation, he or she must file a grievance complaint with the Faculty Ombuds Officer within seventy-five (75) days from the commencement of the grievance negotiation, and in any case not more than one hundred and fifty (150) days from the action or inaction that prompted the grievance, or one hundred and fifty (150) days after the faculty member first learns of such action or inaction, whichever is later.

The grievant is not required to attempt negotiation if he or she believes that it would prove fruitless. Thus the grievant may proceed directly to mediation, a step that must be taken within one hundred and fifty (150) days of the action or inaction prompting the grievance, or one hundred and fifty (150) days after the faculty member first learns of such action or inaction, whichever is later.

2. Mediation. Mediation begins when the grievant files the written grievance complaint with the Faculty Ombuds Officer. The complaint need not conform to any precise pleading requirements but should express in factual terms what the basis of the grievance is and what the faculty member is unhappy about. It is the responsibility of the

Faculty Ombuds Officer, as a mediator, to determine what the nature of the dispute is so that it can be resolved; the true nature of the dispute may in fact differ from that described in the complaint. Following counsel with the Faculty Ombuds Officer, the complaint may be revised. The complaint should follow a prescribed form. The complaint shall contain at a minimum a concise statement of the action or inaction giving rise to the grievance, including the date of the action or inaction and the name of the respondent responsible. Also, the complaint should specify the adverse effect that the action or inaction has had or may have on the faculty member, and the remedy sought. The complaint must state the grievant's address and telephone number at which he or she may be reached and the name of any legal representative, with address and telephone information. If the grievant's representative files the complaint, then it must be signed by the grievant.

The Faculty Ombuds Officer shall mediate the dispute by working with the parties to seek a solution satisfactory to both.

From the time that the formal grievance complaint is filed, the Faculty Ombuds Officer shall have twenty-five (25) days in which to conduct mediation. The Faculty Ombuds Officer may take an additional fifteen (15) days for mediation provided the grievant is notified of the need for such extension of time. By mutual consent, the parties may extend the mediation period for a reasonable time.

If mediation results in a resolution of the conflict, a confidential written report and mediation agreement shall be forwarded to all parties to the dispute. The original copy of the report shall be retained by the Faculty Ombuds Officer. The grievant may withdraw from mediation by giving the Faculty Ombuds Officer signed appropriate notice. If the grievant withdraws from mediation, the grievant normally may not proceed to adjudication. If the mediation fails to produce a satisfactory solution, the grievant may submit the dispute to adjudication. If, at any time during the mediation period, the Faculty Ombuds Officer believes the parties cannot reach agreement, the parties shall be so informed and the mediation effort shall cease, unless the parties agree to the contrary.

If, because of the cessation of mediation or because of its failure to resolve the conflict, the grievant is unsatisfied and has neither signed a mediation agreement nor has withdrawn from mediation during the time allowed, the grievant is eligible to proceed to adjudication.

3. Adjudication: Upon notice to the grievant by the Faculty Ombuds Officer of failure of the mediation process, the grievant shall have ten days after receipt of such notice to submit the formal complaint filed earlier in the mediation process to the Executive Secretary of the Campus Senate for adjudication. Within five days of the receipt of such a request, the Executive Secretary shall inform the respondent of the grievant's action and request of the Faculty Ombuds Officer a summary statement of the mediation effort.

a. Administration:

The Office of the Executive Secretary of the Senate shall be assigned responsibility for keeping a record of grievance actions, initial notification of persons involved, and monitoring compliance with procedures. The Executive Secretary of the Senate shall serve as secretary of the Faculty Grievance Panel.

b. The Faculty Grievance Panel

The Faculty Grievance Panel from which the faculty hearing board is chosen will be composed of all faculty members, excluding ex officio members, currently serving on the College Park Campus Senate.

The elected faculty members of the Senate Executive Committee shall select a Panel Chair who shall take office at the beginning of the academic year and shall serve for one year. In a case in which the Chair of the Faculty Grievance Panel is perceived to have a conflict of interest in the grievance, the grievant may petition the Senate Executive Committee to appoint the Faculty Grievance Hearing Board.

c. Faculty Grievance Hearing Board

For each grievance sent forward for hearing, the Chair of the Panel shall select seven members for potential service on the faculty Grievance Hearing Board, being careful to exclude persons with an apparent conflict of interest.

The Chair of the Panel shall convene the seven potential members of the Hearing Board within five days of their having been selected, as well as the faculty member bringing the grievance and the respondent, to hear challenges, organize the Board, and set the hearing schedule.

Each party to the grievance may challenge the service of one potential member of the Hearing Board.

Following the initial meeting of potential members of the Hearing Board (3.4.1.2.), the Chair of the Panel shall within five days appoint three voting members of the Hearing Board and two alternate members from the unchallenged potential members.

The five members of the Faculty Grievance Hearing Board (three voting and two alternates) shall elect, by majority vote, one voting member to chair the Hearing Board. If a voting member cannot serve to completion of the grievance hearing, an alternate shall then be appointed as a voting member by the Chair of the Hearing Board.

d. Faculty Grievance Hearing Board Procedures

A Faculty Grievance Hearing Board convened pursuant to a faculty member's request shall hear all arguments on substantive and procedural matters and shall make necessary written findings.

The faculty member shall be responsible for demonstrating the merits of his or her grievance. He or she must demonstrate by evidence that the action or inaction complained of occurred; that the action or inaction adversely affects him or her; and that a remedy is reasonable and proper. The faculty member shall have the right to examine and use any legally available part of his or her personnel files.

Before proceeding to the hearing itself, the Hearing Board may decide to dismiss the case if all three voting members agree that the dispute is frivolous or without merit or insufficiently related to the concerns of the academic community.

Both parties to the grievance have the right to peer or legal counsel. The Hearing Board at any step of the grievance procedure may request advice of legal counsel on significant legal issues raised in the grievance. A legal officer who has provided legal advice or service to the respondent may not provide legal advice or service to the Hearing Board.

Hearings shall be open unless one or both parties request that they be closed.

A complete record shall be kept of all proceedings and documents entered as evidence.

The formal rules of evidence shall not apply to this grievance procedure. Each party or his or her counsel will have an opportunity to make an opening and closing statement, present written evidence, examine and cross examine witnesses, offer personal testimony, and file objections, exceptions, motions, and post-hearing briefs. Motions raising the issues of standing or grievability may be raised at any time in the proceedings. If such a motion is upheld, the grievance shall be dismissed.

Motions raising the issue of timeliness must be made at the first stage of the proceedings following the time at which the moving party knew or reasonably could have known of the grounds for making the motion, or the issue shall be waived. If it is determined, following the raising of the issue of timeliness, that the requirements of timeliness are not met, the grievance shall be dismissed. In the case of lack of timeliness as to time limits other than those for the initial filing of the grievance and any appeals, the grievance may be dismissed at the discretion of the hearing authority if the untimeliness results in undue delay or prejudice to the other party.

The faculty member shall first present his or her case; the respondent will then present his or her response.

The Chair of the Faculty Grievance Hearing Board shall make rulings on all questions concerning the course of the proceedings and the presentation of the evidence and may order the proceedings in such manner as he or she deems appropriate. The Chair, at his or her discretion, may set time limits for presentation of testimony and exclude redundant or irrelevant evidence.

Members of the Hearing Board may question the grievant, respondent, and their witnesses. The Board may call witnesses as it deems necessary, but their testimony must be a part of the official hearing record.

Only evidence made part of the official hearing record shall be considered in the determination of the case.

The evidence used by the respondent must be available, in its entirety, to the grievant.

Both parties have the right to call witnesses, including members of the Campus staff, in pursuance of their cases. The Faculty Faculty Ombuds Officer cannot be called as a witness. The Hearing Board cannot assure the presence of witnesses requested by either party. However, either party may request in writing that the Hearing Board contact a witness or witnesses to request their appearance at the hearing; the Hearing Board may contact such witness or witnesses if in its judgment the request is reasonable and the testimony to be given by the witness or witnesses is demonstrably relevant to the issues raised by the grievance.

e. Findings of the Grievance Hearing Board

The Hearing Board shall make its findings and recommendations based upon the vote of a majority of the voting members. The Board shall prepare a written report of its findings, including the reasons for the findings, its recommendations, and any dissent. The report of the recommendation shall be forwarded to the

President with copies to the grievant and to the respondent whose actions or inactions form the basis of the grievance. The report shall be sent within ten days after the conclusion of the hearing.

Within thirty (30) days, the President shall report in writing, to both parties to the grievance, to the Chair of the Hearing Board, and to the Panel, his or her decision in the matter, and what action, if any, will be taken. It is expected that the President will give great weight to the recommendations of the Hearing Board. However, if these recommendations are not implemented, an explanation of this decision should be provided to all of the aforementioned parties.

The decision of the President shall be final.

Should the President decide that the grievance is justified and a remedy is to be awarded, the grievant shall, before receiving any such remedy, execute a written agreement recognizing the remedy to be satisfactory and waiving any claims to causes of action arising out of the grievance.