



## Ohio Administrative Code

### Rule 3339-8-01 Grievance procedures available to members of the instructional staff.

Effective: November 3, 2016

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#### (A) Pre-grievance requirements

Before a grievance is initiated, the faculty member is expected to engage in constructive discussion and consultation with the individual(s) involved, in order to assure that concerns are understood, and to attempt to reach a resolution. Faculty members are also encouraged to consult as appropriate with deans, chairs, colleagues, representatives of the provosts office, or the chair or any member of the committee on faculty rights and responsibilities for advice and counsel. The objective of such consultation is to resolve disputes and misunderstandings by clarification and conciliation, in order to avoid the need to initiate a grievance.

#### (B) Scope of grievance procedure

(1) A grievance is a request for a particular decision or action; or a request for modification of, or relief from, a decision or action previously taken. The purpose of the grievance procedure is to enable members of the faculty to raise questions and concerns, to attempt to resolve differences and, where appropriate, obtain redress, in matters directly affecting an individual or group relationship with the university.

(2) A grievance must identify a particular action, inaction, or decision, and an individual or individuals within the academic division of the university believed to be responsible for it.

(3) A grievance may not be initiated where the subject matter of the proposed grievance is:

(a) An action or decision exclusively affecting one or more individuals other than the grievant.

(b) A decision or action as to which the grievant has already been afforded the right to a university level hearing, whether or not such right was exercised.



(C) Submission of written grievance

A grievance is initiated by the submission of a written statement of the grievance to the committee on faculty rights and responsibilities via the chair of the committee. A grievance should not be filed with the committee until after an individual has used the departmental grievance and/or divisional appeal procedures.

(D) Grievance mediation procedure

The grievant may opt to bypass the mediation procedure and request a hearing by the committee on faculty rights and responsibilities under paragraph (E) of this rule. The grievant may first invoke the mediation procedure described below, or the grievant and the person against whom the grievance may be filed may create an alternative grievance procedure that is mutually acceptable to both of them. Grievants invoking the mediation procedure shall be afforded timely opportunities to reflect on offers and consult with counsel before rendering their decisions.

(1) A mediation committee consisting of three members will be convened by the chair of the committee on faculty rights and responsibilities. Each of the following individuals will appoint one member to the mediation committee within fourteen calendar days:

(a) The committee of faculty rights and responsibilities will appoint a former member of that committee still employed at the university.

(b) The grievant.

(c) The person against whom the grievance has been filed. If the grievance is filed against more than one person, these individuals shall jointly agree on a single person to appoint.

(d) All members of the mediation committee must be either tenured members of the faculty or members of the administration holding tenurable faculty rank and may not be serving on the committee on faculty rights and responsibilities.

(2) The mediation committee will convene within one month. The member appointed by the



committee on faculty rights and responsibilities will serve as chair.

(3) The grievant and the respondent(s) will be expected to attend the mediation meeting. Attendance by legal counsel will not be permitted. Attendance by other individuals will be at the discretion of the mediation committee. The meeting will ordinarily be private and confidential to the extent permitted by law. In its discretion, the mediation committee may review documents and other information presented to it by any of the parties. The mediation committee will endeavor, at the meeting, to mediate and conciliate the dispute, and to bring about an agreed resolution. The members of the mediation committee may, in their discretion, schedule one additional mediation meeting, to be held within fourteen calendar days after the first. Faculty members participating in the mediation procedure shall be afforded opportunity, not to exceed twenty-one calendar days, to reflect on offers and consult counsel before rendering their decisions.

(4) If the matter is resolved to the satisfaction of all parties as a result of the mediation procedure, the dean, department chair, or other appropriate person will promptly implement the action agreed upon. The chair of the mediation committee will report to the chair of the committee on faculty rights and responsibilities that the matter has been resolved.

(5) If the matter is not resolved as a result of the mediation procedure, then the chair of the mediation committee will transmit a memorandum to the chair of the committee on faculty rights and responsibilities advising him or her of this without elaboration.

(6) Once the ad hoc mediation committee has either resolved the matter under paragraph (D)(4) of this rule or advised the chair of the committee on faculty rights and responsibilities that mediation was unsuccessful under paragraph (D)(5) of this rule, the mediation committee will not make any other finding or recommendation nor take any other action in the matter. Neither the mediation committee nor any of its members will retain any written or other record of any of the mediation committees meetings or actions, except as provided in paragraph (D)(4) or (D)(5) of this rule.

(E) Grievance hearing procedure

(1) If the grievance is not resolved as a result of the mediation procedure or if the grievant opts to bypass the mediation procedure, the grievant may request a hearing of the grievance by the



committee on faculty rights and responsibilities. The mediation procedure may not be used to appeal a negative decision concerning promotion or tenure. Paragraph (I) of this rule does not apply to negative decisions concerning promotion and tenure.

(2) At its discretion, the committee on faculty rights and responsibilities will determine whether the hearing will proceed in one of two ways:

(a) According to the procedure described in paragraphs (H)(1) to (H)(4) of rule 3339-8-03 of the Administrative Code; or

(b) With the consent of the parties according to such procedures on file with the office of general counsel that have been developed by the committee on faculty rights and responsibilities for the effective review of grievances brought to it. In order to provide effective review in the different types of situations with which it must deal, the Committee may, at its discretion, adopt more than one grievance hearing procedure alternative to the procedure in paragraph (H) of rule 3339-8-03 of the Administrative Code.

(3) The following regulations apply to any grievance hearing procedure developed by the committee on faculty rights and responsibilities:

(a) A written copy of the procedure to be followed in a particular case will be filed with the office of general counsel, unless the committee on faculty rights and responsibilities has chosen to use procedures already on file. In either case, a copy of the procedures shall be sent to the parties involved. A copy of the procedure shall be available to any person from the office of the office of general counsel and from the chair of the committee on faculty rights and responsibilities.

(b) All grievance hearing committees shall include at least five members of the committee on faculty rights and responsibilities, unless all parties have given their written consent.

(c) Any request by one of the parties to the grievance that an individual member of the committee be excused from the hearing, based on a claim that such member cannot be impartial in the particular case, will be resolved by the chair of the committee on faculty rights and responsibilities, unless the challenge is to the chair, in which case the challenge will be resolved by the vice chair.



(F) Report

Once the committee on faculty rights and responsibilities has made its determination, it will send a report to the parties to the grievance. The report will include findings of fact, conclusions drawn from these facts, and recommendations. At its discretion, the committee may include observations germane to the case.

(G) Implementation

(1) All recommendations made by the committee on faculty rights and responsibilities are to be implemented promptly unless appealed to the president.

(2) If there is no appeal and the committee on faculty rights and responsibilities has recommended that some action should be taken by a chair, dean, or other university official, the committee will notify that person to implement the recommendation promptly. If a person modifies or fails to act on the committee's recommendation, the committee may ask the president to order that its recommendation be carried out. If the recommendation is modified or not implemented, the committee may report this to faculty assembly for its action or instructions.

(H) Appeal to the president

The report of the committee on faculty rights and responsibilities may be appealed to the president within seven calendar days of receipt. Appeals to the president must be made in writing, with copies sent to all parties to the grievance and to the committee on faculty rights and responsibilities. The following appeal procedure is applicable:

(1) The party appealing must specify the basis for objection to the committee's report. Failure to so specify may result in dismissal of the appeal.

(2) The president will establish a schedule for the submission of materials and for the completion of any other steps involved in the appeal.



(3) The president will allow the parties to present argument on appeal. The president may decide whether to receive these arguments in writing, in person, or both. Regardless of the method used to present arguments, the president will allow each party to learn what the other has said and rebut these statements.

(4) The presidents review on appeal will ordinarily be limited to those specific issues of fact, conclusions or recommendations brought to his or her attention by the party appealing.

(5) The president shall be bound by the findings of fact made by the committee on faculty rights and responsibilities unless those findings are against the greater weight of the evidence. Due deference must be accorded to findings of fact of the committee on faculty rights and responsibilities since it is the committee who is best able to observe the demeanor of witnesses and weigh their credibility.

(6) After deliberating on the appeal, the president may respond in the following ways:

(a) The president may concur with and order the committee on faculty rights and responsibilities recommendations to be implemented immediately, unless there is an appeal to the board of trustees.

(b) The president may remand the matter to the committee for further consideration, and shall remand the matter to the committee if the president disagrees with any of the committees findings of facts stating why.

(c) The president may reach different conclusions and/or determine not to follow the recommendations of the committee, but only after consultation with the committee. If, after the remand under paragraph (H)(6)(b) of this rule and after consultation with the hearing committee, the president disagrees with the findings of fact of the committee because, in the presidents judgment, they are against the greater weight of the evidence, the president may reach new findings. In any event, however, the committees conclusions, recommendations, and findings of fact will remain unaltered as part of the record of the case.

(7) The president shall promptly provide a written report of his or her decision on the appeal to the parties and the committee on faculty rights and responsibilities.



If the president, after consultation with the committee, does not accept the Committees conclusions or recommendations, the committee may report this to faculty assembly. If the president, after consultation with the committee, does not accept the committees findings of fact, the committee must report this to faculty assembly. The committee may report to faculty assembly in either its annual report or by placing it on the agenda of a meeting of the faculty assembly for its action or instructions.

(8) If the matter is remanded by the president to the committee on faculty rights and responsibilities, copies of the remand determination and its reasons shall be provided to both parties. The committee will reopen the proceedings and at the conclusion thereof submit a supplemental report to the president and the parties. The president may then act according to the options afforded by paragraph (H)(6) of this rule as if acting on the committee on faculty rights and responsibilities original report, except that a matter may be remanded only once unless the committee agrees to additional remands.

(9) If the president is a party to the grievance, then this paragraph (H) of this rule does not apply and any appeal shall be to the board of trustees.

(I) Appeal to the board of trustees

(1) The presidents decision may be appealed to the board of trustees, which has ultimate authority to take final action to promote the best interest of the university and to protect individual rights. The appeal must be filed with the secretary to the board within fourteen calendar days of receipt of the presidents decision.

(2) The board shall review the report and supplemental report, if any, of the committee on faculty rights and responsibilities and the decision of the president. In its review, the board may consult with the president and shall give all parties to the grievance an opportunity to present argument to it. The board may decide to receive these arguments in writing, in person, or both. The board action is final and shall be accompanied by a statement in writing setting forth its reasons.

(J) General matters

(1) References in this rule of the Administrative Code to a particular officeholder are to be read as



including another individual serving in an acting or interim capacity for the officeholder and any other individual designated by the officeholder to serve in his or her stead.

(2) Time deadlines specified in this rule of the Administrative Code may be extended by agreement of the parties involved or, in the absence of such agreement, by decision of the chair of the committee on faculty rights and responsibilities.

(3) The running of any time period specified in these procedures will be suspended during:

(a) Thanksgiving recess

(b) Winter recess

(c) Spring recess

(d) The interval between the end of final examinations for spring semester and the date on which faculty are required to report for the fall semester.

Grievance proceedings are generally treated as confidential to the extent permitted by law.