

**3364-72-07** **Grievance procedure.****(A) Policy statement**

Whenever possible, disputes should be resolved informally at the lowest level. To that end, all instructional staff and administrators are encouraged to engage in free and open communication in the airing of differences.

**(B) Purpose of the policy**

To provide a procedure concerning faculty grievance and appeals.

**(C) Scope**

The policy applies to main campus university faculty and instructional staff not bound by a collective bargaining agreement and not covered by rule 3364-72-51 of the Administrative Code (faculty grievance and appeals), which applies to occupational therapy and physical therapy faculty of the Judith Herb college of education, health science and human service, and all faculty in the college of medicine and life sciences, college of pharmacy and pharmaceutical sciences and college of nursing,

**(D) Definitions**

The term "grievance" shall mean a written complaint concerning the interpretation or application of a specific term or provision of university, college or department policy, or, concerning a disciplinary act, or alleging that the application of such procedures or criteria was clearly erroneous, arbitrary or capricious. Grievances involving discretionary decisions shall be processed solely with respect to whether or not the prescribed procedures were followed and whether or not prescribed criteria, if any, were observed.

- (1) The term "grievant" means an instructional staff member or group of instructional staff members not within the bargaining unit involved in a grievance.
- (2) As used in this procedure, the term "days" means calendar days except Saturdays, Sundays and legal holidays as observed by the university.

- (3) Nothing in these definitions and rules shall be construed to prohibit the bringing of a grievance by more than one instructional staff member, not within the bargaining unit, in one proceeding.

(E) Procedure

If the matter is not resolved informally, a formal grievance may be filed on the official grievance form.

- (1) Initial filing:

The aggrieved instructional staff member shall present the grievance in writing on the official grievance form to the instructional staff member's dean within fifteen days following the act or omission giving rise to the grievance (The definitive act or omission shall be the final decision in any multi-stage process, e.g. promotion and tenure.), or the date the instructional staff member knew or reasonably should have known of such act or omission. The written grievance shall state the nature of the act or omission giving rise to the grievance, the date when the act or omission occurred, the university, college or department policy provision allegedly violated, the remedy sought, and be signed by the grievant. Grievances shall be filed at the lowest level, as described below, with authority to resolve the grievance.

- (2) Dean:

Upon receipt of a grievance, the dean, shall arrange for a meeting with the grievant, to take place within fifteen days, to discuss and attempt to resolve the grievance. Within fifteen days following the meeting, the dean shall send a written response to the grievance, including reasons, on the original grievance form, to the grievant, with a concurrent copy to the provost and executive vice president for academic affairs. If the grievant does not accept the answer provided at this step, the grievant may, within five days, appeal, on the original grievance form, to the provost and executive vice president for academic affairs.

- (3) Provost and executive vice president for academic affairs:

Upon receipt of a grievance or grievance appeal the provost and executive vice president for academic affairs (or designee) shall arrange for a meeting with the grievant, to take place within fifteen days, to discuss and attempt to resolve the grievance. Within fifteen days following the meeting, the provost and executive vice president for academic affairs (or designee) shall send a written response to the grievance, including reasons, on the original grievance form, to the grievant. If the grievant does not accept the answer provided at this step, the grievant may, within five days, appeal, on the original grievance form, to the provost and executive vice president for academic affairs (or designee) for presentation to the university grievance appeals board.

(4) University grievance appeals board:

Upon receipt of a grievance appeal the university grievance appeals board shall conduct a hearing on the matter. The university grievance appeals board shall consist of three non-bargaining faculty serving staggered terms, elected for the purpose by the non-bargaining faculty (one from the law faculty, and two from the chairpersons and assistant/associate vice presidents with faculty rank) through an election supervised by the office of the provost and executive vice president for academic affairs, and three members (full-time university employees not subject to collective bargaining) appointed by the president.

Upon receipt of notice of the members of the university grievance appeals board, the grievant shall have five working days in which to file a written challenge, for good cause, to the suitability of any member of that board with the provost and executive vice president for academic affairs (or designee). If the president agrees, the challenged member shall be replaced:

- (i) If an instructional staff member, by the executive committee of the faculty senate, and
- (ii) If a presidential appointee, by the president.

If the grievant is either a visiting faculty, or adjunct faculty, the grievant may, within five working days, file a written request with the provost and executive vice president for academic affairs (or

designee) that the law faculty member be replaced with an instructional staff member of the same status as the grievant.

The university grievance appeals board shall conduct its hearings in accordance with the following rules:

- (a) The board shall fix the time and place for each hearing and, at least five days prior thereto, shall mail notice of the time and place of hearing to the grievant and to the provost and executive vice president for academic affairs (or designee).
- (b) At their own expense, any party may be represented at the hearing by counsel or by other authorized representative.
- (c) Any party wishing a stenographic or electronic record shall make such arrangements directly with the stenographer or electronic recorder and shall notify the other parties of such arrangements in advance of the hearing. The requesting party or parties shall pay the cost of such record. The official record of the hearing shall be the notes of the members of the university grievance appeals board.
- (d) The grievant and respondent are entitled to attend all hearings. The university grievance appeals board shall have the power to excuse from the proceeding any witness or witnesses during the testimony of other witnesses. It shall be discretionary with the university grievance appeals board to determine the propriety of the attendance of any other persons.
- (e) The university grievance appeals board for good cause shown, may adjourn the hearing upon the request of a party or upon its own initiative, and must adjourn when all the parties agree thereto.
- (f) All decisions of the university grievance appeals board shall be in writing, signed by a majority of the board. The finding and recommendation to the president shall also be made by majority vote. Should the board deadlock, it shall forward to the president a statement of the relevant facts

and position and arguments of each party without recommendation.

- (g) A hearing shall be opened by the recording of the place, time, and date of hearing, the presence of the members of the university grievance appeals board, the parties and counsel, if any, the receipt by the university grievance appeals board of the grievance document, administrative answers, and any stipulation agreed to by the parties.

Exhibits, when offered by either party, may be received in evidence by the university grievance appeals board and shall be provided to the opposing party. The names and addresses of all witnesses and exhibits in order received shall be made a part of the record. All parties shall have the right to cross examine the witnesses and challenge the exhibits of the opposing party.

Except in cases of discipline, the grievant shall present first. In all cases the university grievance appeals board shall afford full and equal opportunity to all parties for presentation of relevant evidence.

- (h) The hearing may proceed in the absence of any party who, after due notice, fails to be present or fails to obtain an adjournment. A finding and recommendation shall not be made solely on the default of a party. The university grievance appeals board shall require the other party to submit such evidence as may be required for the making of a finding and recommendation.

- (i) The parties may offer such evidence as they desire and shall produce such additional evidence as the university grievance appeals board may deem necessary to an understanding and determination of the dispute. The university grievance appeals board shall have the authority to compel the testimony of any employee of the university or the production of any document in the possession of the parties not protected by attorney-client privilege. The university grievance appeals board shall be the judge of the relevancy and materiality of the evidence offered and

conformity to legal rules of evidence shall not be necessary. All evidence shall be taken in the presence of all the members of the university grievance appeals board and all the parties except where any of the parties is absent in default or has waived its right to be present.

- (j) The university grievance appeals board may receive and consider the evidence of witnesses by affidavit, giving it only such weight as seems proper after consideration of any objections made to its admission.

All documents not filed with the university grievance appeals board at the hearing, but which are arranged at the hearing or subsequently by agreement of the parties to be submitted, shall be filed simultaneously with the university grievance appeals board and all other parties with certification of service to all the other parties provided to the university grievance appeals board by the submitting party.

- (k) Whenever the university grievance appeals board deems it necessary, it may make an inspection in connection with the subject matter of the dispute after written notice to the parties who may, if they so desire, be present at such inspection.

- (l) The parties may provide, by written agreement, for the waiver of oral hearings.

- (m) At the close of the hearing the chairperson of the university grievance appeals board shall inquire of all parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies, the chairperson of the university grievance appeals board shall declare the hearings closed and a minute thereof shall be recorded. If briefs or other documents are to be filed, the hearings shall be declared closed as of the final date set by the university grievance appeals board for filing. The university grievance appeals board shall have thirty calendar days from the close of hearings to file its finding and recommendation with the president. A copy of the

university grievance appeals board's finding and recommendation shall be sent at the same time as it is filed with the president to each party to the dispute.

- (n) Any party who proceeds with the hearing after knowledge that any provision or requirement of these rules has not been complied with, and who fails to state an objection thereto in writing, shall be deemed to have waived the right to object.

Upon receipt of the university grievance appeals board's finding and recommendation the president shall, within fifteen days, make a final decision on the grievance. The grievant and all other affected parties shall be informed in writing of the president's decision.

(E) Standard of review

The university grievance appeals board shall review decisions on the basis of the following questions:

- (1) Were prescribed procedures followed?
- (2) Were prescribed criteria applied?
- (3) Was the application of the criteria in the grievant's case clearly erroneous?

Decisions of the board shall be based on a preponderance of the evidence presented to the board. It shall not consider any documentation or testimony taken outside the hearing unless by mutual consent of the grievant, the university and the board.

(F) Remedies

All officers (dean, provost, university grievance appeals board) hearing a grievance shall be bound by the following:

- (1) Their decisions shall be limited to only the question or questions submitted for their decision.

- (2) If error is found, the matter grieved shall be returned to the level of error with instructions to proceed in accordance with the university grievance appeals board's decision.
- (3) They shall not render any decision which would result in the violation of university policy or a public statute or regulation.

Effective: 4/20/2020

CERTIFIED ELECTRONICALLY

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Certification

04/08/2020

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Date

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