

## **Faculty and Administrator Grievance Protocols**

The University grievance policy (Working Policy §2.160 et seq.) is reserved for employment grievances *between (1) a faculty member or administrator and (2) a supervisor with authority over such employee when the employee believes the supervisor has directly taken an unjustified, incorrect, and/or unreasonable action that adversely affects the employee's employment.* As identified in the policy, this impact on employment would be tangible and examples would be letters placed in an employment file, demotions, reduced work based on employment contracts, etc. The following form is to be used by those filing grievances to ensure that process is followed and that the concern expressed qualifies for the grievance process.

After an initial verbal conversation with the supervisor who, in the view of the grievant, has caused the grievance (Step 1), and if no satisfactory resolution can be found, the grievant will use this form to file an official, written grievance against the supervisor (Step 2). The employee should fill out this form within 15 business days after obtaining knowledge of the facts giving rise to the grievance. The written grievance will be logged by the HR Director, who will review and sign off on whether it meets the requirements of a grievance. Once the HR Director has completed his or her review, this form will be returned to the employee.

If the HR Director indicates on this form that this matter qualifies for the grievance process, the employee will send this grievance form to the same supervisor (whose action led to the grievance) and have a second meeting with that supervisor to discuss the written document. The parties may, upon mutual agreement, invite a third party (such as the supervisor's direct report) to attend the meeting to assist in reaching a resolution. This second meeting shall take place within five (5) business days after the employee receives this form back from the HR Director.

The supervisor whose actions led to the grievance must respond to the grievance in writing—on this same grievance form—within five (5) business days after the second meeting. The party who filed the grievance will be allowed three (3) business days in which to reply in writing—on this same grievance form—to the supervisor's response. If a resolution has not been reached, then within two (2) business days after replying in writing to the supervisor's written response, the party who filed the grievance shall submit the entire grievance form, along with all supporting materials submitted by the parties, to the President for further action (Step 3). The President, as outlined in the grievance policy, will call a grievance committee of peers to review the submission and advise (Steps 4 and 5). The President will make the final judgement (Step 6).

In the case of an administrator having a direct report to the President, the President may be the supervisor whose action led to the grievance. In that case only may the employee with the grievance petition to the chair of the Board who would be the final arbitrator in the case if it is not earlier resolved through the process outlined. In this situation, the chair of the Board of Trustees serves in the role of the president in all outlined processes.

### **Recourse if the Matter Does Not Qualify for the Grievance Process**

The HR director will reject any grievance (or portion of any grievance) that does not qualify for the University's grievance process. If the HR Director so determines that one or more claims do not qualify for the grievance process, the grieving party may appeal the rejection of such claims in a writing

delivered by the grieving party to the President within three (3) business days after receiving notice of the HR Director's rejection of such claims. The President's decision on this appeal shall be final and binding.

If the grievance is rejected only in part, the grieving party will be instructed to revise his or her written grievance within five (5) business days to include only those matters that qualify for grievance. To seek relief for actions taken by a co-worker not serving in a supervisory capacity (or for any other action that does not qualify for the University's grievance policy), the employee's options are limited. The employee may attempt to resolve the dispute with the other person directly or by involving the supervisor of either or both of them. The employee may also seek resolution through the ombudsperson and/or the HR Director. Regardless of whether a mutually satisfactory outcome is reached, all employees are required to conform their behavior at all times to University expectations.

**Employee Grievance Form**

1. Name of Employee: \_\_\_\_\_

2. Name of Supervisor involved in grievance: \_\_\_\_\_

3. Name(s) of witnesses having information about this grievance (**general character witnesses are not allowed to participate**):


4. Describe the employment action leading to this grievance, including the date when this took place  
*(Note: a grievance should be started within 15 working days of the action that is being grieved)*

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5. Describe why you believe this employment action is unjustified/unreasonable:

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6. Describe how the supervisor's action has negatively impacted your employment:

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7. Describe the specific relief you are seeking as a remedy for the alleged unjustified adverse employment action:

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8. Please attach available supporting evidence related to this grievance. Such evidence may include text messages, letters, emails, video and/or audio recordings, etc.

Signature of Employee: \_\_\_\_\_  
Date: \_\_\_\_\_

**TO BE COMPLETED BY HUMAN RESOURCES**

- The matter described above qualifies for the University grievance process
- The matter described above does not qualify for the University grievance process
- The matter described above qualifies in part, and fails to qualify in part, for the University grievance process.\* Within five (5) business days, employee must resubmit this Employee Grievance Form to me after revising it to focus solely on the following action(s) that I, the HR Director, have determined to qualify for grievance:

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Signature of HR Director: \_\_\_\_\_  
Date: \_\_\_\_\_

\*Notice of Right to Appeal: You have the right to appeal a determination that one or more of your claims does not qualify for the University's grievance process by a writing delivered to the President within three (3) business days.

**Supervisor's Response to Grievance:**

1. Please indicate whether you agree with the employee's description of the employment action resulting in this grievance. If you do not agree, please provide your own description:

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2. Please describe why you took the above-described employment action:

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3. In reviewing the submission of the employee and talking to him/her, please indicate whether you are willing to adjust the action taken that has led to the grievance? Give reasons for your answer:

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4. Please provide name(s) of witnesses having information about this grievance (general character witnesses are not allowed to participate):

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5. Please attach available evidence supporting your defense of this grievance. Such evidence may include text messages, letters, emails, video and/or audio recordings, etc.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**Employee's Response to Supervisor's Response to Grievance**

1. Please identify whether you are willing to accept the supervisor's response? Give reasons and provide any additional supporting evidence:

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2. Please indicate whether you want to send the grievance to the next step?

- Yes
- No

If you answered "no," then this grievance is now considered closed.

If you answered "yes," then this form with attachments will be forwarded to the President's Office who will appoint a grievance committee to review this grievance.

## **Grievance Committee Guidelines**

### **Working Policy 2:160 *et seq.***

The following guidance does not replace Working Policy §2:160 *et seq.* but instead provides procedural details and/or interpretations of terminology that will guide all University grievance committee hearings. In addition to these requirements, the University offices of General Counsel and/or Human Resources will be available for guidance on the particular grievance at hand.

#### **General requirements:**

1. Upon receiving a completed Employee Grievance Form submitted in accordance with WP §2:160 *et seq.* and the [Faculty and Administrator Grievance Protocols](#), the President will convene a grievance committee to consider the matter. The President has the sole and absolute discretion to decide the number of persons to sit on the grievance committee, as well as to select the individuals to serve as committee members.
2. The President will review the Employee Grievance Form (including any and all attachments thereto) and invite both parties to submit additional written responses and/or supporting evidence, as desired, to augment their prior submissions. Supporting evidence may be in any form, including text messages, letters, emails, video and/or audio recordings, etc.
3. The President will confirm with both parties the names of witnesses each intends to call to testify at the hearing (as listed on the Employee Grievance Form) and provide each party an opportunity to amend his/her witness list. Each party will then be asked to submit a summary of the testimony each witness is expected to provide. A brief statement written and signed by a witness may be submitted in lieu of a party's summary of such statement. Each party's written witness summaries and/or signed statements will be provided to the other party before the hearing begins. Only fact witnesses will be permitted to offer testimony. Character witnesses are not allowed.
4. The President will forward to the grievance committee the completed Employee Grievance Form (including any and all attachments thereto), along with any additional written responses and/or supporting evidence received by the President. At the same time, the President will also provide the committee with the parties' final witness lists and all written witness summaries and/or statements.
5. The grievance committee must hold a hearing within ten (10) business days after receiving the grievance package from the President.
6. The role of the grievance committee is to make findings of fact and to reach an advisory opinion as to whether the grievant has proven, by a preponderance of the evidence, that he/she was wrongfully subjected to an adverse employment action. Additional guidance on these concepts is set forth below.
7. The grievance committee's decision must be reasonable in light of the totality of the evidence presented (understanding that some evidence may be more compelling than other evidence).
8. Grievance committee members must deliberate in good faith, i.e., without malice, ill-will, bias, or disinterest in favor or against any party.
9. If for any reason a member of the grievance committee believes that he/she cannot be fair and impartial in reaching a determination, he/she must report such belief to the President immediately.
10. Hearings are not open to the public. Only the parties involved, their non-legal representatives, and testifying witnesses are eligible to attend the hearing. Parties have no right to be present throughout the entire hearing; rather, a party is permitted to be present only during the

presentation of that party's proffered evidence (including the testimony of any witnesses called by that party). A party does not have the right to be present during the presentation of the opposing party's testimony or during the testimony of any witness called by the opposing party. No party has the right to question the opposing party, or any witness called by the opposing party, at the hearing.

11. At the hearing, the grievance committee must allow both the grievant and the person grieved to (a) submit relevant documents, (b) testify on his/her own behalf; (c) question his/her own witnesses (if any), and (d) otherwise make a full presentation of evidence. The grievance committee may impose reasonable limits on the length of documents submitted and the number of questions posed, so long as such limits are applied evenly to all parties. The grievance committee must ensure that the parties are given prompt access to, or copies of, all documents submitted by an opposing party.
12. The grievance committee must not consider any written materials that has not previously been provided to all parties.
13. Grievance committee members may question the parties and/or their witnesses to clarify their statements. The grievance committee may also call its own witnesses to testify at the hearing or seek written statements from such witnesses. If the committee determines that new information has been obtained which could substantially affect the outcome of the proceeding, the committee will share that information with both parties and give each party an opportunity to respond before reaching its decision.
14. Upon request by the grievant, the grievance committee must permit the grievant to withdraw the grievance at any time before the grievance committee begins its deliberations.
15. The grievance committee's deliberative process must occur behind closed doors outside the presence of non-committee members.
16. The grievance committee must submit its factual findings (reached after weighing all the evidence and credibility) in writing to the President.
17. No member of the grievance committee shall reveal any evidence presented at the hearing in any manner, except as contained in the written report submitted to the President.

### **Determination of Adverse Employment Actions**

The purpose of the grievance committee is to determine whether the grieving party has wrongfully suffered an "adverse employment action." Two elements are needed to establish an adverse employment action:

- (1) The action must be **materially adverse**; that is, more than an inconvenience or an alteration of job responsibilities; and
- (2) There must be an **objective basis** for asserting that the action was adverse; the grievant's subjective beliefs about the desirability of one job or job assignment over another are not sufficient.

Examples of materially adverse employment actions include, without limitation, a decrease in wages or salary, a less-distinguished title, a material loss of benefits, significantly diminished responsibilities, discipline, harassment, denial of promotions, a hostile work environment, a material difference in work hours or work conditions, loss of pay, and other indices that are unique to a particular situation.

### **Burden and Standard of Proof**

The burden of persuading the grievance committee that the actions or inactions at issue were not proper rests upon the grievant. The grievance committee must use the "preponderance of evidence"

standard (also called the “more likely than not” standard) in determining whether the grievant has met his/her the burden of proof. The grievance committee must determine whether, given the preponderance of evidence, a **reasonable person** would conclude that the grievant was (or was not) wrongfully subjected to an adverse employment action.

- This “preponderance of evidence” standard is alternately described as the “greater weight of evidence” (envision the scales of justice, tipped slightly one way or the other), as what is more likely than not, 50.01 percent or 50 percent plus a feather.
- If the evidence is 50/50, the grievance must be denied, as the grievant bears the ultimate burden of persuasive that he/she was *wrongfully* subjected to some adverse employment action.
- An adverse employment action is “wrongful” if such action violated some term of employment or policy of the University, including without limitation the University’s harassment and anti-discrimination policies. An adverse employment action that does not violate University policy or contractual obligations is generally permissible as an act falling within the supervisor’s discretion. Policies and contractual obligations governing a faculty member’s employment may be found in the Faculty Working Policy, official University letters and emails, or in such other documents as identified by the University.

### **Reviewing & Weighing the Evidence**

Members of the grievance committee should read all available documents before the hearing. In reviewing and weighing evidence, the committee should bear in mind the following guidance:

1. All relevant evidence should be carefully evaluated, including factual evidence offered by the parties and witnesses, observations of conduct, opinions about conduct, and circumstantial evidence that supports or negates a party’s statements or has bearing on the truthfulness of a party or a witness.
2. Each committee member should consider what additional clarifications he/she wishes to obtain and make a list of unanswered questions or areas of confusion. Parties and/or witnesses should then be asked to provide responses to those questions at the hearing.
3. Committee members must approach this process with an open mind, treat all parties fairly and with respect, and respect the right to other committee members to be inquisitive and to reach their own conclusions.

### **Assessing Credibility**

Credibility is often a key issue in employment-related disputes. Assessing credibility involves a process of weighing the accuracy and veracity of evidence. When source, content, and plausibility are strong, credibility is strong. Credibility exists on a 100 percent point scale, with the most credible being 100 percent, and the least being zero percent. Evidence should be “more credible than not” to even get placed (weighed) on the preponderance scale. A single lie in one area does not necessarily destroy witnesses’ credibility in other areas. A preponderance can be established simply because you believe one party and not the other, based on credibility of the party and the evidence provided, even if there were no witnesses to the alleged act.

### **Writing the Report**

In writing the report, the grievance committee is to remain focused on the specific policies and/or other terms of employment allegedly violated. Each such policy and/or term must be broken down into its various components, as applicable. The committee must then make findings of fact relevant to each

component, apply the policy to those facts, and reach a conclusion as to whether a violation has occurred. The committee should find that a violation occurred only where the grievant has established, by a preponderance of evidence, the presence of each component of the policy or other term of employment at issue. The committee should avoid including in its written report any discussions not relevant to the policies or employment terms in dispute.

**Advisory Decision**

The decision of the grievance committee is advisory only. Promptly upon receiving the grievance committee's written report, the President will provide copies of the report to the parties and other interested persons, as appropriate. After considering the grievance committee's findings, the President will make a final judgment on the grievance. The President will inform the grievance committee and the parties of his/her decision, which shall be final and binding.