

### **3.42 DISPUTE RESOLUTION, MEDIATION AND GRIEVANCE**

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#### **PROCEDURES**

##### Mediation

###### A. The Mediation Process

1. To reduce the disruption on the University community, all parties to a dispute shall put forth the maximum effort to reach an agreement resolving the problem. To assist them in this endeavor shall be the duty of the Ombudsperson(s).
2. The aggrieved party must select one or more Ombudspersons from the Ombudsperson Panel for the period during which the aggrieved party begins the mediation process. The aggrieved party may choose to work with one Ombudsperson or a Committee of up to 3 members. The aggrieved party may, if necessary, request assistance from the FAC Chair in selecting and contacting their Ombudsperson(s). At any time during the mediation process the aggrieved party may choose to dismiss or replace any or all of the chosen Ombudspersons.
3. A request for mediation must be filed with the chosen Ombudsperson(s) within 9 calendar months from the date on which the perceived violation occurred or was discovered by the aggrieved party, whichever is later. If the violation is ongoing, the limitation period begins to run at the time of the latest occurrence of the violation. This limitation period for filing the petition may be extended by a period not to exceed 1 month by the Ombudsperson(s), which must be granted in writing.
4. An aggrieved party shall be obligated to explain their dispute to an Ombudsperson and attempt resolution of the dispute through that process prior to filing a formal grievance petition.
5. The Ombudsperson(s) shall use mediation or other dispute resolution techniques to work with the aggrieved party and the respondents in order to understand the nature of the complaint and any response thereto. The Ombudsperson(s) shall attempt to help the parties reach a mutually agreeable resolution of the dispute.

6. The Ombudsperson(s) shall ensure that the mediation proceedings are scheduled and completed in timely fashion.
  7. Upon the completion of the mediation, the Ombudsperson(s) shall submit a report to the FAC Chair and all parties involved in the proceeding, notifying the Chair and the parties whether or not mediation efforts were successful. The report shall be sent to all parties by a means that requires evidence of delivery to each party. If a resolution to the satisfaction of both parties is not achieved, then the aggrieved party may file a grievance petition.
- B. Selection and Training of the Ombudsperson Panel
1. The Ombudsperson Panel is comprised of 9 individuals who serve 3-year, staggered terms, beginning on July 1.
  2. On April 1 the FAC Chair will initiate the process of selecting 3 members to replace the 3 whose terms will expire on June 30 of that year. Before this time, the President of the Faculty shall provide a list of academic personnel who are tenured and who do not hold administrative appointments as supervisors of other faculty. Any person on this list is eligible to serve on the Ombudspersons Panel.
  3. The Faculty Senate Executive Committee may select 1 individual from the list for the Ombudspersons Panel. The FAC Chair shall select 2 additional individuals at random from the list. If the Faculty Senate Executive Committee declines to make a selection, the FAC Chair shall select 3 individuals at random from the list of eligible faculty.
  4. The FAC Chair shall notify those selected, who may decline to serve for good cause shown. Whether good cause has been shown shall be determined by the FAC Chair.
  5. If necessary, the FAC Chair shall select 1 or more additional individuals, at random, from the list, and repeat the process described above, until the 3 replacement members of the Ombudsperson Panel have been identified before May 15.
  6. In the event that an ombudsperson becomes unable or ineligible to serve during the 3- year term, that position shall remain unfilled until the subsequent April, and at that time an individual will be selected to fill the unexpired term in accordance with the procedure described above.
  7. By May 15, the FAC Chair shall provide the President of the Faculty with a list of the ombudspersons, including the term for each, for the next year.

### C. Selection and Training of the Ombudsperson Trainer

1. By April 1, the Faculty Senate Executive Committee shall also appoint if necessary a tenured faculty member to serve as a Trainer for the Ombudspersons. The appointed Ombudsperson Trainer shall be knowledgeable of the Faculty Senate and of the University Grievance Policy. Current or past Ombudspersons are preferred to serve as the faculty trainer. Upon acceptance of the appointment, the Ombudsperson Trainer shall serve a term of 3 years, renewable once upon approval by the Faculty Senate Executive Committee. Prior to providing training to Ombudspersons, the Trainer shall receive instruction about the Grievance Policy provided by Human Resources. If the appointed Trainer is unable to fulfill their responsibilities, the Faculty Senate Executive Committee shall appoint an interim trainer to serve for up to the remainder of the academic year.
2. At the beginning of the academic year, the Past President of the Faculty in consultation with the Ombudsperson Trainer will organize an orientation and training session for the Ombudsperson Panel.

## III. Grievance Procedures

### A. Initial Proceedings

1. A formal grievance petition must be submitted to the FAC Chair within 10 class days of the receipt by the aggrieved party of the Ombudsperson(s) report following the attempted mediation of a dispute. The petition shall include the following: a description of the nature of the complaint, a statement of the alleged improper action, the identity of the respondent(s), and an explanation of the desired redress.
2. Upon receipt of the petition the FAC Chair shall within 5 class days send a copy of the petition to the respondent(s). The respondents shall have 10 class days after receipt of the petition to answer in writing to the FAC Chair. The written answers shall specify which allegations are admitted and which denied. A copy of the answers shall be sent to the grievant by the FAC Chair.
3. Within 10 class days after receipt of the answer, the grievant may submit a rebuttal or notice that the grievance process shall be terminated. Unless the grievant terminates the process, the FAC Chair proceeds to the assembly of the Grievance Committee.

4. Throughout the grievance process, the aggrieved party may terminate the grievance at any time by withdrawing the complaint from the FAC Chair. Responding parties may only terminate a grievance through reaching a satisfactory accord with the aggrieved party.

When an act is required or allowed to be done at or within a specified time, the FAC Chair, for cause shown, may at any time at the Chair's discretion, if a request is made before the expiration of the period originally prescribed, order the period enlarged to a further specified time. Written notice of such extension shall be provided to all parties.

B. Assembling the Grievance Committee

1. After the rebuttal deadline, the FAC Chair shall, unless the grievance has been terminated, notify eligible members of the applicable Grievance Committee Panel (selection detailed in Section IV).
  - a. Ordinarily, when the grievant is a faculty member, the Grievance Committee shall be comprised only of members of the Faculty Grievance Committee Panel, and when the grievant is an administrator the Grievance Committee shall be comprised only of members of the Administrator Grievance Committee Panel. However, if both parties agree, which agreement shall be provided to the FAC Chair by the rebuttal deadline, the Grievance Committee may be comprised of members of either panel, but not both.
  - b. Members of the Panel who are also members of the grievant's academic unit, if the grievant is a faculty member, are not eligible to serve on the Grievance Committee. Any Vice President, including any Assistant or Associate Vice President with direct line authority over a grievant, is not eligible to serve on the Grievance Committee.
  - c. A Panel member may decline to serve for good cause shown. Whether good cause has been shown shall be determined by the FAC Chair.
2. The FAC Chair shall use the lists created pursuant to Section IV. When the members of the Panel have been confirmed, the FAC Chair shall convene a meeting of the parties and the members of the Faculty Affairs Committee for the selection of the Grievance Committee, which shall be comprised of 5 members. Prior to the meeting, the Chair will provide to

the parties the still-randomly listed names of Panel members, with numbers assigned from 1 (top name) to 25 (bottom name).

3. The FAC Chair shall read the names on the list, starting with the first. After each Panel members is identified, either party may request that the member be stricken for cause. Such cause shall be identified in open session. If both parties agree that the member shall be stricken for cause, that member is stricken. If both parties do not agree, the Faculty Affairs Committee shall adjourn to executive session to determine whether cause has been shown, which determination shall immediately be made known to the parties.
4. After the entire list has been read and all members for whom there is cause have been stricken, the FAC Chair shall submit the remaining list to both parties. The list shall not be renumbered but, instead, each member shall retain the number originally assigned. Each party may then request that up to 2 members on the list be stricken peremptorily.
5. Those stricken peremptorily are removed from the list, and the first (from the top) 5 remaining members on the list shall constitute the Grievance Committee. The next 3 remaining members down the list shall be alternates. The others on the list are excused from the service on this Grievance Committee.
6. In the event that, at the conclusion of the selection process, 5 members do not remain on the list, the meeting shall be adjourned and a second Grievance Committee shall be selected in the manner set forth above. The FAC Chair shall make best efforts to expedite this process and schedule a second meeting to assemble the Grievance Committee.
7. The FAC Chair shall promptly notify members of the Grievance Committee of their selection and arrange for the first meeting of the Grievance Committee.

C. Pre-Hearing Proceedings

1. At its first meeting, the Grievance Committee shall select a chair from among its members. The Chair shall send and receive all communications on behalf of the committee, and shall preside at the hearing. The Chair shall take no action without the concurrence of a majority of the Committee. The Chair is a voting member of the Committee.

2. Upon selection of the Chair, the FAC Chair shall provide the Grievance Committee a copy of the petition, the answer(s), and any rebuttal.
3. The Grievance Committee Chair shall administer the production and exchange of evidence as follows:
  - a. Five days after the Chair has been selected, the Chair shall request that each party provide all documents in its possession or control that are relevant to any claims, response, or other issue in the proceeding within 10 days from the date of the request. All documents shall be submitted in electronic form. Upon receipt, a copy of all documents received by the Chair shall be promptly provided to both parties.
  - b. After the initial production of documents, a party may submit to the Chair a request for the production of additional documents from the other party, from an individual grievant or respondent, or from non-parties to the proceeding. Such request must be accompanied by a statement providing reasonable grounds for the Chair to decide whether the requested documents exist, are in the possession or control of the person from whom the documents are to be produced, and are likely to contain relevant information. If the Chair decides that there are reasonable grounds for production, the Chair shall make best efforts to obtain the requested documents, which shall be provided to all parties upon receipt. Any person, including any party, from whom documents are sought under this paragraph may request that the Chair, for good cause shown, withdraw or limit the request for documents.
4. The Grievance Committee shall meet within 10 days after the initial production of documents. At this meeting, the Grievance Committee will decide, based on the documents provided, whether it will request testimony from witnesses. If the Grievance Committee decides to request witness testimony, it will so notify both parties, in writing, within 5 days of this meeting, stating the identity of the requested witnesses(es) and issues on which testimony will be requested. A requested witness who is a grievant or respondent shall testify, unless good grounds are shown for not testifying. If a non-party witness is requested, appearance is voluntary. The Chair shall notify both parties, in writing, of the Grievance Committee's decision and propose dates for a hearing, to which both parties shall respond within 5 days.

5. A hearing shall be required unless both parties agree to waive it. The Chair of the Committee shall notify both parties of proposed dates for a hearing, to which notice both parties shall respond within 5 days. Best efforts shall be made by the Grievance Committee and both parties to schedule the hearing promptly. Should the Chair determine that any party is unreasonably delaying the hearing, the Chair may schedule a timely hearing notwithstanding the fact that that party cannot attend.

D. The Grievance Hearing

1. The purpose of the hearing shall be to resolve all disputed issues with dispatch, in fairness to both parties, and to bring about a just determination of the grievance. Within the time limits defined by the Chair, the parties may submit evidence regarding any issue relevant to the grievance. In the event a party objects to the introduction of any evidence, the Chair shall rule on the objection in accordance with the purpose of the hearing.
2. A party may testify as a witness and may call a non-party to testify as a witness. A witness may be called to testify on behalf of one party or, if agreed by the parties, on behalf of multiple parties. The witness may make a statement or be questioned by the party on whose behalf the witness has been called. The Grievance Committee shall elicit such additional information from the witness as it deems necessary to make a full and fair decision.
3. A party may submit documents and suggest to the Grievance Committee how information in that document should be interpreted or applied. No document may be submitted, however, unless that document has been produced during the pre-hearing proceedings, unless the proponent demonstrates extraordinary circumstances justifying the failure timely to produce, as determined by the Chair. In the event the Chair determines that documents not previously produced may be admitted, the Chair may in its discretion postpone the hearing to enable all parties to respond to the newly-produced documents.
4. No later than 10 days before the scheduled hearing, all parties shall submit to the Chair a proposed list of witnesses to be called and documents to be submitted, and the requested time for the presentation of evidence. Parties may submit a joint proposal if they intend to consolidate their presentation of evidence. Should the hearing be scheduled less than 10 days after the conclusion of the pre-hearing proceedings the proposed lists shall be submitted as far in advance of the hearing as is feasible.

5. The Chair shall prepare a hearing schedule, taking into account but not bound by each party's proposal. The schedule shall include the time each party will be allowed for the presentation of evidence and closing statement, the order of presentation, and the list of witnesses to be called and documents to be submitted by all parties. The chair shall provide the hearing schedule to all parties.
6. All parties may make a closing statement after all evidence has been submitted. The grievant shall be entitled to make the final closing statement.
7. Any party making an allegation bears the burden of proving that allegation by a preponderance of the evidence.
8. The Chair shall make arrangements for the hearing, including securing a room or rooms and equipment for recording the hearing.
9. Statements made during the hearing, the recording of the hearing, and all documents exchanged among the parties and the Grievance Committee shall be deemed confidential.
10. A reasonable amount of time shall be allocated to the hearing in order to fairly accommodate both parties' evidence and witnesses while respecting the commitments of the Grievance Committee. Whenever possible, a hearing should span no more than a day.

E. Resolution of the Grievance

1. Within 10 days after the hearing, or 10 days after both parties have advised the Grievance Committee that a hearing is waived, the Chair shall submit the report of the Grievance Committee to both parties and to the University President. The report shall set forth the material allegations of the parties, explain the Grievance Committee's evaluation of the evidence in support and in opposition to those allegations, and a recommendation on the appropriate resolution of the grievance based on that evaluation of evidence.
2. Within 10 days after receipt of the Grievance Committee's report, both parties may submit a written rebuttal to the University President, with copies provided to both parties and to the Grievance Committee.
3. The University President shall, within 20 days of receipt of the report from the Grievance Committee, provide to all parties to the grievance and the

Grievance Committee a written memorandum setting forth their decision and the reasons for that decision. The University President shall give due consideration to the recommendations of the Grievance Committee in making their decision.

4. After the University President has rendered their decision, the Chair shall deposit all documents produced during the grievance, including any email or other communications among the parties and the Grievance Committee and the recording of the hearing in the grievance files located in Human Resources.

#### IV. Selection of the Grievance Panels

A. Identification of Persons Eligible to Service on Grievance Committee Panels. There shall be 2 Grievance Committee Panels: the Faculty Grievance Committee Panel and the Administrative Grievance Committee Panel.

1. At the request of the FAC Chair, the office of the Provost shall provide (a) an alphabetical list of all full-time unclassified academic personnel, tenured and untenured, indicating the status of each individual and (b) a separate alphabetical list of all unclassified administrative personnel with regular and probationary appointments. The President will not be included on either list.
2. The FAC Chair will remove from the 2 lists any person who is serving or has served on a Grievance Committee in the current academic year and any person who is currently serving as an Ombudsperson. The remaining persons are eligible to serve on the Grievance Committee Panels. Both lists will be electronically randomized and maintained by the FAC Chair.

B. Selection of the Grievance Committee Panels

1. Each Panel is comprised of 25 individuals who serve a 1-year term, beginning on August 15. Any person on the list provided by the Provost and not serving on the Ombudsperson Panel is eligible to serve on the Grievance Committee Panels.
2. No later than March 1, the FAC Chair shall begin the process of selecting 25 eligible individuals for each Grievance Panel. Starting from the top of each of the 2 randomized lists, the FAC Chair will select the first 25 persons on each list and notify them by email of their eligibility. They will reply by email to indicate whether they accept or decline the appointment to the Panel for which they are eligible. Those selected may decline to serve for good cause shown. Whether good cause has been shown shall

be determined by the FAC Chair. If persons decline appointment for good cause shown, then the FAC Chair will go further down the appropriate randomized list, repeating the selection and notification process, until 25 persons have accepted appointment to the Faculty Grievance Committee Panel, and 25 different persons have accepted appointment to the Administrator Grievance Committee Panel. When this has occurred, the FAC Chair will send the names on both 25-person Panels to the President of the Faculty for posting on the Faculty Senate website on or before August 15.