

FACULTY GRIEVANCE PROCEDURE

577-042-0005

Purpose and General Explanation

(1) The purpose of this procedure is to provide the faculty of Portland State University with a means for prompt and efficient handling of grievances. The procedure covers a broader range of grievances than those grievable under current collective bargaining agreements between Portland State University and various bargaining agents.

(2) The emphasis is on solving problems in a collegial manner with members of the University community confronting each other directly as peers seeking to resolve conflicts in a way that embodies mutual respect and fairness. The procedure encourages settlement of disputes at the lowest possible level by direct communications between the conflicting parties. In filing grievances, grievants are expected to do so in a timely manner so that subsequent events do not make adjustments of grievances impossible or highly impractical.

(3) Peer review and an opportunity for peer hearing are provided. The grievant is also assured of an opportunity to appeal to the President of the University, Appeal from the decision of the President is governed by the Administrative Rules of the Oregon State System of Higher Education.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: PSU 1-1989(Temp), f. & cert. ef. 1-5-89; PSU 2-1989, f. & cert. ef. 2-1-89; PSU 2-2001(Temp), f. 9-27-01, cert. ef. 10-1-01 thru 1-29-02; Administrative correction 3-15-02; PSU 3-2002, f. & cert. ef. 10-22-02

577-042-0006

Definitions

- (1) "Grievance" means a complaint of unfair or inequitable treatment by the University:
 - (a) Grievances relating to charges of discrimination may be filed with the University Affirmative Action Officer;
 - (b) If the grievant is entitled to a contested case procedure, the grievant may elect to use that procedure;
 - (c) Grievances resulting from disciplinary action will be processed under the procedures established in the Bargaining Agreement between PSU and AAUP/PSU, if applicable.
- (2) "Grievant" means one or more members of the Portland State University faculty asserting a grievance, but shall not include administrators or similar persons in supervisory positions.
- (3) "Day" means a day when classes or examinations are scheduled and held in accordance with the official academic calendar of the University, excluding Saturdays and Sundays. Summer Session days will not be counted as days for those employees not employed during the Summer Session.
- (4) "Dean" shall have its ordinary meaning but includes in appropriate cases, University administrators serving in an equivalent supervisory capacity.
- (5) "Department Chair" shall have its ordinary meaning but includes, in appropriate cases, University Administrators serving in an equivalent supervisory capacity. In the event there is no person in the position of department chair, or its equivalent, the Dean shall assume the obligations of the Department head as required by this grievance procedure.
- (6) "Grievance Officer" means the administrative officer appointed by the President to receive and act upon the recommendations of the faculty committee. The Grievance Officer shall be the Vice President in the reporting line of a given academic staff member. In cases where a grievance is against the relevant Vice President, the President shall appoint a Grievance Officer mutually agreeable to both parties.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: PSU 1-1989(Temp), f. & cert. ef. 1-5-89; PSU 2-1989, f. & cert. ef. 2-1-89; PSU 2-2001(Temp), f. 9-27-01, cert. ef. 10-1-01 thru 1-29-02; Administrative correction 3-15-02; PSU 3-2002, f. & cert. ef. 10-22-02

577-042-0010

General Provisions

(1) At any step, a grievant has the right to be accompanied, assisted, or represented by other persons, including counsel, designated by the grievant. Except in cases of illness, absence from the country, or official leave of absence, the grievant shall be present in person when the grievance is presented and at any subsequent hearing. A grievant has the right of self-representation at any step of this grievance procedure.

(2) The parties may agree to modify the time limits prescribed in the grievance procedure. All such agreements shall be in writing and signed by the grievant and the administrator who is required to act within the time limit being modified.

(3) Failure of the grievant to take action within the time limits specified at any step, including any extensions, shall be considered acceptance by the grievant of the decision. Failure by the accountable administrator to act within the specified time limits, including any extensions shall constitute a violation of this procedure, the complaint against which will automatically become a part of the grievance and will be treated in subsequent stages of the procedure as if it had been part of the original complaint, except that no evidence or testimony shall be required save that the administrator did not act within the time limits. Failure of the administration to communicate the decision on a grievance at any step within the time limits, including any extension thereof, shall allow the grievant to proceed to the next step.

(4) A grievant may withdraw a grievance at any time.

(5) At any time, the parties may, at their discretion, enter into confidential mediation communications pursuant to OAR 580-001-0030 and 580-022-0047 provided as follows:

(a) All parties to the mediation must agree in writing to engage in confidential mediation; and

(b) All parties must agree to suspend consideration of the grievance until such time as the mediation resolves the grievance or the mediation concludes. In no case shall the rights of the grievant to continue to pursue resolution of the grievance under this rule be limited or considered untimely if the parties have mutually agreed to confidential mediation, whether or not the grievance has been formally presented prior to confidential mediation. A grievance that has not been formally presented and that is not resolved by confidential mediation must be presented as described in OAR 577-042-0015 within 30 days of the conclusion of confidential mediation.

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Stats. Implemented:

Hist.: PSU 1-1989(Temp), f. & cert. ef. 1-5-89; PSU 2-1989, f. & cert. ef. 2-1-89; PSU 2-2001(Temp), f. 9-27-01, cert. ef. 10-1-01 thru 1-29-02; Administrative correction 3-15-02; PSU 3-2002, f. & cert. ef. 10-22-02; PSU 1-2013(Temp), f. & cert. ef. 3-20-13 thru 9-16-13; PSU 3-2013, f. & cert. ef. 7-29-13

577-042-0015

Presentation of Grievance

(1) Grievances shall first be presented within 30 days, from the date of the act or omission upon which the grievance is based or from such late date that the grievant knew or reasonable should have know of such act or omission. However, in no event shall a grievance be presented more than 120 days after such act or omission except in those cases where the grievant is out of the country or on an official leave of absence.

(2) Oral presentation of a grievance:

(a) Having decided that he or she wishes to seek redress for a grievance, the grievant shall orally present a grievance to the grievant's department chair. At the time of this presentation the grievant shall state that a grievance is being presented;

(b) The department chair shall discuss the grievance with the grievant and shall endeavor to obtain whatever additional information may be necessary to take action on the grievance;

(c) If the grievance involves a person other than the grievant and the department chair, the department head shall, if possible, arrange a meeting which includes the other person involved. If this meeting establishes a need for more information than has already been presented or secured, the department chair shall gather such information;

(d) At this stage the persons involved shall make sincere and significant efforts to settle the grievance;

(e) Within ten days of the first presentation of the grievance, the department chair shall orally notify the grievant of the outcome and record the date of notification;

(f) In the expectation that a high percentage of grievance will be settled at this state, no grievance file shall be generated.

(3) Written presentation of a grievance:

(a) Step one: Dean's review.

(A) If the grievant is not satisfied with the decision of the department chair and desires to proceed further, the grievant shall, within five days of being notified of the department chair's decision, present the grievance in writing to the Dean on the form attached as **Appendix 1**;

(B) Upon receipt, the Dean shall immediately transmit a copy of the written grievance to the department chair and shall create a grievance file into which all written materials concerning the grievance will be placed. The grievance file shall be available at any time to the grievant;

(C) The Dean shall schedule a meeting with the grievant to attempt to resolve the matter. This meeting shall occur within ten days of the written presentation of the grievance. Either party may bring to the meeting any persons he or she wishes. The Dean may conduct further meetings and inquiries as deemed necessary and proper;

(D) The Dean shall conclude the review and notify in writing the grievant and the department chair of the decision on the grievance within ten days of the meeting.

(b) Step two: Peer hearing.

(A) If the grievant is not satisfied with the Dean's decision and desires to proceed further, the grievant shall, within five days of receipt of the Dean's written decision, file a request for a hearing with the chairperson of the University Faculty Grievance Panel, using the form attached as **Appendix 2**;

(B) The Faculty Peer Hearing Committee, having been duly constituted in accordance with section (v) of this rule, shall obtain the grievance file from the Dean and provide opportunity for the grievant, Dean, and department chair to submit any additional written information or written statements in connection the grievance;

(C) Within ten days of its final selection, the Hearing Committee shall set a reasonable schedule for presentation of testimony;

(D) The Hearing Committee shall present its report including recommendations, to the grievant and to the Vice President within ten days after the conclusion of the hearing;

(E) Procedure for the conduct of peer hearings:

(i) Hearings shall be open unless closed by request of the grievant or requirement of law;

(ii) During the hearing an opportunity shall be provided for the grievant and the Dean to present brief opening and closing statements and for both parties to call and examine witnesses, to introduce exhibits, and present and question witnesses. Each party may present evidence, argument, and rebuttal;

(iii) The grievant shall appear at the hearing and may be accompanied and assisted by other persons, including counsel. Any costs incurred for presentation or assistance will be the obligation of the party requesting it;

(iv) The administrator or administrators most directly involved shall appear at the hearing and may be accompanied and assisted by other persons, including counsel. The administration shall be represented at the hearing by the Dean who may be accompanied and assisted by other persons, including counsel;

(v) The chairperson of the Hearing Committee shall preside at such hearings and over the deliberations of the Committee. The chairperson shall have authority to rule upon questions of

admissibility of evidence and exclude evidence which is irrelevant, untrustworthy, and unduly repetitious;

(vi) If either party to the grievance alleges that evidence or testimony may not be given on account of prohibition by law or regulation, that party shall deliver to the Committee a copy of the law or regulation. If the Committee requests it, the party shall also provide any relevant Attorney General's opinion or legal decision;

(vii) Based only on the evidence presented at the hearing, the Hearing Committee shall describe the issues considered, reach conclusions and recommendations based on those conclusions in a written report to the Grievance Officer;

(viii) Dissenting opinions, if any, by members of the Hearing Committee shall be submitted with the report if so desired by the dissenting members;

(ix) A recording and copies of all documents will be made accessible to all parties to the grievance.

(c) Step three: Grievance Officer's Decision.

(A) After reviewing the Hearing Committee's report and recommendations, the Grievance Officer shall take action on the grievance including accepting or rejecting, in whole or in part, the report and recommendations of the Hearing Committee;

(B) The Grievance Officer shall make his/her decisions solely on the basis of evidence presented at the hearing and the report of the Committee. If he/she finds the evidence and the report insufficient to enable him/her to make a decision he/she shall refer the matter back to the committee with a request for further evidence or findings. Upon receipt of such a request the Committee shall reconvene and within 15 days present an amended report to the Grievance Officer;

(C) The Grievance Officer shall provide written notice to all previous parties of the decision on the grievance within ten days of receipt of the report of the Hearing Committee.

(d) Step four: Review by President.

(A) If the grievant is not satisfied with the action of the Grievance Officer, the grievant may, within five days of receipt of the Grievance Officer's decision, petition the President to review;

(B) The President shall notify the grievant in writing of the decision and of the reasons for the decision within 30 days of the presentation of the petition for review. As part of the decision, the President may take such further action as deemed necessary and proper, including granting or denying relief, or remanding the grievance for further proceedings.

(C) Except as set forth in OAR 580-021-0050 and herein, the decision of the President shall be final and shall be an exhaustion of the grievant's administrative remedies with the institution and

the State Board of Higher Education. If the grievance involves the President, where the President is the immediate supervisor of the grievant, then the appeal set forth in section (A) above shall be to the Chancellor of the Oregon University System (all other provisions of this rules shall otherwise apply).

(4) Nothing contained in this administrative rule shall be construed to limit the right of the State Board of Higher Education to make such inquiry and review into personnel actions as it may from time to time deem, in its sole discretion, appropriate.

[ED NOTE: Appendices referenced in this rule are available from the agency.]

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: PSU 1-1989(Temp), f. & cert. ef. 1-5-89; PSU 2-1989, f. & cert. ef. 2-1-89; PSU 2-2001(Temp), f. 9-27-01, cert. ef. 10-1-01 thru 1-29-02; Administrative correction 3-15-02; PSU 3-2002, f. & cert. ef. 10-22-02

577-042-0020

Non-Retaliation

Regardless of the outcome of the grievance procedures, no action adverse to the grievant may be taken in retaliation for invoking the procedure.

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Stats. Implemented:

Hist.: PSU 1-1989(Temp), f. & cert. ef. 1-5-89; PSU 2-1989, f. & cert. ef. 2-1-89

577-042-0025

University Faculty Grievance Panel and Faculty Peer Hearing Committee

(1) Membership:

(a) All members of the Portland State University faculty who are employed for a full academic year at 0.50 FTE or more are eligible for membership on the University Faculty Grievance Panel.

(A) The panel shall consist of 24 members selected through a random process by the Secretary of the Faculty. The President of the University shall appoint each of these 24 persons to serve for a term of one academic year.

(B) Any person selected shall be required to serve and may be excused by the President, upon request, only in exceptional circumstances.

(b) The Secretary of Faculty shall convene the panel within 10 days of its appointment to elect a chairperson. The Secretary of the Faculty shall explain the duties of the chairperson. The election shall be accomplished by secret ballot and majority vote.

(c) Vacancies, including the chairperson, occurring during the term of the panel, shall be filled in the same manner as the initial selection and appointment.

(2) Faculty Peer Hearing Committee:

(a) When a Hearing Committee is requested by a grievant, the chairperson of the Grievance Panel and the Secretary of the Faculty, without delay, shall draw through a random process five names from the panel, excluding the chairperson. These five persons shall be the Hearing Committee for the grievance at hand. The chairperson shall promptly notify the persons selected. The chairperson shall also notify the parties of the persons selected.

(b) Within one day of receipt of such notice, each party may challenge any selection for cause. All such challenges shall be decided by the chairpersons of the Grievance Panel. In addition each party is entitled to one peremptory challenge. Peremptory challenges shall be exercised within one day after all challenges for cause have been decided and replacement selected.

(c) All vacancies resulting from challenges, for cause or peremptory, shall be filled by drawing names of the remaining panel members in the manner described above.

(d) If the panel is exhausted, additional members shall be selected at random by the Secretary of the Faculty and temporarily appointed by the President in the same manner as permanent members of the Faculty Grievance Panel.

(e) Upon completion of the selection of the Hearing Committee, the chairperson of the Grievance Panel shall promptly convene the Committee. The chairperson of the Grievance Panel shall make the first nomination for chairperson of the Hearing Committee, and conduct an election in which

the five members of the Hearing Committee select their chairperson. At this point the Hearing Committee is duly constituted and shall proceed with its business.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: PSU 1-1989(Temp), f. & cert. ef. 1-5-89; PSU 2-1989, f. & cert. ef. 2-1-89