

## FAYETTEVILLE STATE UNIVERSITY

### PROCEDURES FOR THE CONDUCT OF HEARINGS IN FACULTY GRIEVANCE CASES

#### I. PROCEDURES PRIOR TO AND DURING THE HEARING

##### A. Purpose of the Grievance Process

The purpose of the grievance process is to provide current members of the faculty a means by which to redress matters concerning employment related grievances other than those involving decisions pertaining to reappointment, the conferral of tenure, discharge, imposition of serious sanctions, termination, or those within the jurisdiction of another standing committee.

As a prerequisite to accessing the formal grievance process outlined in Section 607 of the *Code and Section VIII of the Fayetteville State University Tenure and Promotion Policies, Regulations and Procedures*, a faculty member must utilize the mediation process delineated in Fayetteville State University's ("University") *Mediation Policy for Faculty and EPA Non-Faculty Employees*. Following the termination of mediation for any reason other than a settlement, the faculty member will have twenty (20) days to petition the Grievance Committee for redress.

##### B. Role of the Grievance Committee

The Grievance Committee is authorized to hear representations by individuals directly involved in a grievance, and to advise on adjustments to administrators, when appropriate. The role of the Grievance Committee is not intended to second-guess the professional judgment of officers and colleagues responsible for making administrative decisions

##### C. The Scope of Review

In order to prevail in the formal grievance process, a faculty member must establish that the faculty member experienced a remediable injury attributable to the alleged violation of a right or privilege based on federal or state law, University policies or regulations, or commonly shared understandings within the academic community about the rights, privileges, and responsibilities attending University employment.

##### D. The Burden and Standard of Proof

The burden of proof in grievance cases rests with the faculty member ("Petitioner") and not with the responding administrator ("Respondent"). The standard of proof, i.e., the degree of proof required, is proof by a preponderance of the evidence. This means that the Petitioner must prove that the Petitioner's allegations are more likely true than not true. The Grievance Committee determines whether this burden of proof has been met by weighing all of the evidence and the demeanor and credibility of the witnesses in the light of experience and common sense judgments.

**E. Pre-Hearing Procedures**

**1. Decision by Grievance Committee Whether to Grant a Request for Hearing**

If mediation fails to produce a voluntary resolution, the Grievance Committee must determine whether a hearing should be held in response to the submission of a petition. The submission of a petition shall not result automatically in a hearing. The Grievance Committee shall determine whether the facts alleged justify a hearing. If the Grievance Committee determines that a hearing is justified and that the issues presented are within the purview of the Grievance Committee's responsibility, it shall schedule a hearing.

Dismissal of a petition is required in the following cases:

- a. the petition addresses a problem that is not within the Committee's jurisdiction (a matter that is the responsibility of another committee, e.g. suspension, discharge, termination, demotion in rank, nonreappointment, which are all matters handled by the Hearing and Reconsideration Committee), or
- b. the petition fails to allege a remediable injury attributable to the alleged violation of a right or privilege based on federal or state law, university policies or regulations, written unit or departmental policies or regulations, or commonly shared understandings within the academic community about the rights, privileges and responsibilities attending university employment.

**2. Arrangements for Court Reporter and Transcript**

If a decision is made to grant the Petitioner a hearing, the Grievance Committee Chair shall contact the Office of Legal Affairs to arrange for the contracting and payment of a court reporter. The court reporter shall make a verbatim record of the hearing. Either of the parties desiring a transcript may obtain one by making a request to the Office of Legal Affairs.

**3. Notification of Attendance by a Third-Party Observer**

The Petitioner and the Respondent may each be accompanied by a third-party observer. A third-party observer may not be an attorney. No later than five (5) days prior to the hearing, the Petitioner shall notify the Grievance Committee Chair and the Respondent of the Petitioner's intent to be accompanied by third-party observer. If the Petitioner intends to be accompanied by a third-party observer, the University may elect to have a third-party observer accompany the Respondent.

**4. Witnesses and Exhibits**

- a. To facilitate the hearing process, at least five (5) days prior to the date set for the hearing, the parties shall provide a list of witnesses and copies of exhibits they intend to introduce at the hearing, to each other, and to the Grievance Committee Chair. No evidence shall be provided to other

members of the Grievance Committee (except the Chair) prior to the hearing.

- b. If a party wishes to introduce exhibits at the hearing that were not included in the pre-hearing exchange, the Grievance Committee Chair shall decide whether there is a good reason for accepting such evidence.
- c. Exhibits must be numbered sequentially and identified by party; e.g., Petitioner's Exhibit No. 1, Respondent's Exhibit No. 3, or Committee's Exhibit No. 5. The exhibit numbers shall be written on the exhibits and page numbered at the time they are first presented to the Grievance Committee. References to documents during the hearing shall be by exhibit number with page references as applicable.
- d. The Grievance Committee has no authority to compel the attendance of witnesses. However, the Chair of the Grievance Committee may request that the Chancellor ensure that all witnesses who are employees of the university are given permission to attend the hearing.

## **F. The Hearing**

### **1. Call to order-Quorum**

The chair of the Grievance Committee shall call the hearing to order, determine whether a quorum exists, and explain the hearing process. A quorum consists of a simple majority of the total Grievance Committee membership.

### **2. Challenge to Grievance Committee Membership**

Committee members who hold an appointment in the Petitioner's department, who will testify as witnesses, or who have any other conflict of interest, are disqualified from participating in the hearing. Following the call to order, each party will be given an opportunity to challenge a Grievance Committee member's qualifications to serve. The Grievance Committee (excluding the Grievance Committee member under challenge) will decide whether to grant or deny that challenge based on a majority vote.

### **3. Opening Remarks**

Starting with the Petitioner, each party will be given the opportunity to make opening remarks limited to five (5) minutes each. The purpose of opening remarks is to orient the Grievance Committee to the nature of the case and to the facts the parties intend to establish. Opening remarks shall not be considered evidence.

### **4. Petitioner's Case in Chief**

At the conclusion of opening remarks, the Petitioner shall present evidence (witnesses, documents, his or her own testimony, etc.) in support of his or her allegation(s). All witnesses maybe questioned by members of the Grievance Committee, the Petitioner and the Respondent. Except under extraordinary circumstances, Petitioner will be limited to a total of one (1) hour to present his or her case. Petitioner may reserve a portion of the one (1) hour for rebuttal at the conclusion of Respondent's evidence. If the Petitioner wishes to reserve rebuttal

time, Petitioner must notify the Grievance Committee chair of that fact at the beginning of the hearing.

**5. Respondent's Case**

The Respondent may present evidence (witnesses, documents, his or her own testimony, etc.) in support of the decision not to reappoint. All of Respondent's witnesses may be questioned by members of the Committee, the Respondent and the Petitioner. Except under extraordinary circumstances, Respondent will be limited to a total of one (1) hour to present his or her response.

**6. Closing Remarks**

At the conclusion of all the evidence, Petitioner may make closing remarks to the Grievance Committee followed by the closing remarks of Respondent. Closing remarks shall not exceed fifteen (5) minutes each.

**II. PROCEDURES FOLLOWING THE CONCLUSION OF THE HEARING**

**A. Grievance Committee's Decision**

If, after hearing the matter, the Grievance Committee determines that no adjustment in favor of the faculty member is appropriate, it shall so advise, in writing, the faculty member, the dean, department chair, or other respondent administrator and the chancellor.

If, after hearing the matter, the Grievance Committee determines that an adjustment in favor of the aggrieved faculty member is appropriate, the Grievance Committee shall so advise the faculty member, department chair, dean or other respondent administrator. If the relevant administrator does not make the recommended adjustment or a different adjustment satisfactory to the faculty member, within a reasonable period of time, the Grievance Committee shall advise the chancellor of its recommendation that an adjustment is appropriate.

**B. The Chancellor's Decision**

The chancellor shall base his or her decision on the recommendation of the Grievance Committee and the record from the faculty grievance hearing. The chancellor may, in his or her discretion, consult with the Grievance Committee before making a decision. The decision of the chancellor is the final administrative decision.

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